

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2015 Supplement

Including Acts of the 2015 Regular Session of the General Assembly

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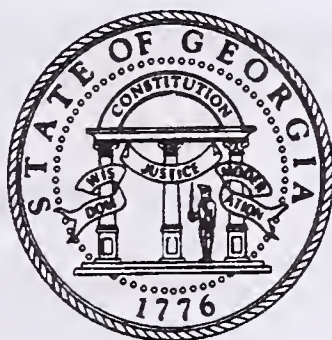
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*and*

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## Volume 28

## 2012 Edition

Title 37. Mental Health

Title 38. Military, Emergency Management,  
and Veterans Affairs

Title 39. Minors

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Including Annotations to the Georgia Reports  
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## **THIS SUPPLEMENT CONTAINS**

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

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### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

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References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
John Marshall Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.



**Indices:**

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 37

## MENTAL HEALTH

Chap.

1. Governing and Regulation of Mental Health, 37-1-1 through 37-1-100.
2. Administration of Mental Health, Developmental Disabilities, Addictive Diseases, and Other Disability Services, 37-2-1 through 37-2-50.
3. Examination, Treatment, etc., for Mental Illness, 37-3-1 through 37-3-168.
4. Habilitation of the Developmentally Disabled Generally, 37-4-1 through 37-4-127.
5. Community Services for the Developmentally Disabled, 37-5-1 through 37-5-10.
7. Hospitalization and Treatment of Alcoholics, Drug Dependent Individuals, and Drug Abusers, 37-7-1 through 37-7-168.

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### CHAPTER 1

## GOVERNING AND REGULATION OF MENTAL HEALTH

### Article 2

#### **Powers and Duties of the Department of Behavioral Health and Developmental Disabilities**

Sec.

37-1-20. Obligations of the Department of Behavioral Health and Developmental Disabilities.

Sec.

37-1-29.

Crisis stabilization unit defined; certification of units; minimum standards and requirements; designation as an emergency receiving facility; legislative intent.

### ARTICLE 2

## POWERS AND DUTIES OF THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES

**Law reviews.** — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).



**37-1-20. Obligations of the Department of Behavioral Health and Developmental Disabilities.**

The department shall:

(1) Establish, administer, and supervise the state programs for mental health, developmental disabilities, and addictive diseases;

(2) Direct, supervise, and control the medical and physical care and treatment; recovery; and social, employment, housing, and community supports and services based on single or co-occurring diagnoses provided by the institutions, contractors, and programs under its control, management, or supervision;

(3) Plan for and implement the coordination of mental health, developmental disability, and addictive disease services with physical health services, and the prevention of any of these diseases or conditions, and develop and promulgate rules and regulations to require that all health services be coordinated and that the public and private providers of any of these services that receive state support notify other providers of services to the same patients of the conditions, treatment, and medication regimens each provider is prescribing and delivering;

(4) Ensure that providers of mental health, developmental disability, or addictive disease services coordinate with providers of primary and specialty health care so that treatment of conditions of the brain and the body can be integrated to promote recovery, health, and well-being;

(5) Have authority to contract, including performance based contracts which may include financial incentives or consequences based on the results achieved by a contractor as measured by output, quality, or outcome measures, for services with community service boards, private agencies, and other public entities for the provision of services within a service area so as to provide an adequate array of services and choice of providers for consumers and to comply with the applicable federal laws and rules and regulations related to public or private hospitals; hospital authorities; medical schools and training and educational institutions; departments and agencies of this state; county or municipal governments; any person, partnership, corporation, or association, whether public or private; and the United States government or the government of any other state;

(6) Establish and support programs for the training of professional and technical personnel as well as regional advisory councils and community service boards;

(7) Have authority to conduct research into the causes and treatment of disability and into the means of effectively promoting mental health and addictive disease recovery;



(8) Assign specific responsibility to one or more units of the department for the development of a disability prevention program. The objectives of such program shall include, but are not limited to, monitoring of completed and ongoing research related to the prevention of disability, implementation of programs known to be preventive, and testing, where practical, of those measures having a substantive potential for the prevention of disability;

(9) Establish a system for local administration of mental health, developmental disability, and addictive disease services in institutions and in the community;

(10) Make and administer budget allocations to fund the operation of mental health, developmental disabilities, and addictive diseases facilities and programs;

(11) Coordinate in consultation with providers, professionals, and other experts the development of appropriate outcome measures for client centered service delivery systems;

(12) Establish, operate, supervise, and staff programs and facilities for the treatment of disabilities throughout this state;

(13) Disseminate information about available services and the facilities through which such services may be obtained;

(14) Supervise the local office's exercise of its responsibility concerning funding and delivery of disability services;

(15) Supervise the local offices concerning the administration of grants, gifts, moneys, and donations for purposes pertaining to mental health, developmental disabilities, and addictive diseases;

(16) Supervise the administration of contracts with any hospital, community service board, or any public or private providers without regard to regional or state boundaries for the provision of disability services and in making and entering into all contracts necessary or incidental to the performance of the duties and functions of the department and the local offices;

(17) Regulate the delivery of care, including behavioral interventions and medication administration by licensed staff, or certified staff as determined by the department, within residential settings serving only persons who are receiving services authorized or financed, in whole or in part, by the department;

(18) Classify host homes for persons whose services are financially supported, in whole or in part, by funds authorized through the department. As used in this Code section, the term "host home" means a private residence in a residential area in which the occupant owner or lessee provides housing and provides or arranges for the



provision of food, one or more personal services, supports, care, or treatment exclusively for one or two persons who are not related to the occupant owner or lessee by blood or marriage. A host home shall be occupied by the owner or lessee, who shall not be an employee of the same community provider which provides the host home services by contract with the department. The department shall approve and enter into agreements with community providers which, in turn, contract with host homes. The occupant owner or lessee shall not be the guardian of any person served or of their property nor the agent in such person's advance directive for health care. The placement determination for each person placed in a host home shall be made according to such person's choice as well as the individual needs of such person in accordance with the requirements of Code Section 37-3-162, 37-4-122, or 37-7-162, as applicable to such person;

(19) Provide guidelines for and oversight of host homes, which may include, but not be limited to, criteria to become a host home, requirements relating to physical plants and supports, placement procedures, and ongoing oversight requirements;

(20) Supervise the regular visitation of disability services facilities and programs in order to assure contracted providers are licensed and accredited by the designated agencies prescribed by the department, and in order to evaluate the effectiveness and appropriateness of the services, as such services relate to the health, safety, and welfare of service recipients, and to provide technical assistance to programs in delivering services;

(21) Establish a unit of the department which shall receive and consider complaints from individuals receiving services, make recommendations to the commissioner regarding such complaints, and ensure that the rights of individuals receiving services are fully protected;

(22) With respect to housing opportunities for persons with mental illness and co-occurring disorders:

(A) Coordinate the department's programs and services with other state agencies and housing providers;

(B) Facilitate partnerships with local communities;

(C) Educate the public on the need for supportive housing;

(D) Collect information on the need for supportive housing and monitor the benefit of such housing; and

(E) Identify and determine best practices for the provision of services connected to housing;



(23) Exercise all powers and duties provided for in this title or which may be deemed necessary to effectuate the purposes of this title;

(24) Assign specific responsibility to one or more units of the department for the development of programs designed to serve disabled infants, children, and youth. To the extent practicable, such units shall cooperate with the Georgia Department of Education and the University System of Georgia in developing such programs;

(25) Have the right to designate private institutions as state institutions; to contract with such private institutions for such activities, in carrying out this title, as the department may deem necessary from time to time; and to exercise such supervision and cooperation in the operation of such designated private institutions as the department may deem necessary;

(26) Establish policies and procedures governing fiscal standards and practices of community service boards and their respective governing boards; and

(27) Coordinate the establishment and operation of a data base and network to serve as a comprehensive management information system for disability services and programs. (Code 1933, §§ 88-601, 88-602, 88-603, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-603, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1987, p. 3, § 37; Ga. L. 1993, p. 1445, § 7; Ga. L. 2002, p. 1324, § 1-6; Ga. L. 2003, p. 558, §§ 5, 6; Ga. L. 2008, p. 263, § 2/SB 469; Ga. L. 2009, p. 8, § 37/SB 46; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2014, p. 309, § 1/SB 349; Ga. L. 2015, p. 1361, § 1/HB 512.)

**The 2014 amendment**, effective April 16, 2014, inserted “, including performance based contracts which may include financial incentives or consequences based on the results achieved by a contractor as measured by output, quality, or outcome measures,” near the beginning of paragraph (5); deleted “and” at the end of paragraph (23); substituted “; and” for a period at the end of paragraph (24); and added paragraph (25).

**The 2015 amendment**, effective July 1, 2015, substituted “advisory councils” for “planning boards” in paragraph (6); substituted “local administration” for “regional administration” in paragraph (9); deleted “to regional offices established by the board pursuant to Code Section

37-2-4.1” following “budget allocations” in paragraph (10); substituted “the local office’s exercise of its responsibility concerning” for “the regional office’s exercise of its responsibility and authority concerning” in paragraph (14); substituted “local offices concerning the administration” for “regional offices concerning the receipt and administration” in paragraph (15); substituted “local offices” for “regional offices” in paragraph (16); added paragraph (20); redesignated former paragraphs (20) through (25) as present paragraphs (21) through (26), respectively; deleted “and” at the end of paragraph (25); substituted “; and” for a period at the end of paragraph (26); and added paragraph (27).



**JUDICIAL DECISIONS**

**Cited** in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

**37-1-27. Legislative findings; Suicide Prevention Program; implementation.**

**Cross references.** — Training of public school personnel in suicide prevention and awareness; no duty of care imposed, § 20-2-779.1.

**37-1-29. Crisis stabilization unit defined; certification of units; minimum standards and requirements; designation as an emergency receiving facility; legislative intent.**

(a) As used in this Code section, the term “crisis stabilization unit” means a short-term residential program operated for the purpose of providing psychiatric stabilization and detoxification services that complies with applicable department standards and that provides brief, intensive crisis services 24 hours a day, seven days a week.

(b) The department shall be authorized to certify crisis stabilization units pursuant to this Code section for the purpose of providing psychiatric stabilization and detoxification services in a community based setting rather than inpatient hospitalization and other higher levels of care.

(c) The department shall establish minimum standards and requirements for the certification of crisis stabilization units in its policies and procedures. Following any changes to such policies and procedures pertaining to crisis stabilization units, notification of such changes shall be posted on the department’s website within 45 days and shall remain posted on the website for at least six months. Such policies and procedures shall include, but not be limited to, the following:

(1) The capacity to carry out emergency receiving and evaluating functions;

(2) Voluntary and involuntary admission criteria;

(3) The prohibition to hold itself out as a hospital or bill for hospital or inpatient services;

(4) The unit is operated by an accredited and licensed, if applicable, health care authority;

(5) The unit has operating agreements with private and public inpatient hospitals and treatment facilities;

(6) The unit operates within the guidelines of the federal Emergency Medical Treatment and Active Labor Act with respect to stabilization and transfer of clients;



- (7) Length of stay;
- (8) Designation of transitional beds;
- (9) Billing;
- (10) Physician and registered professional nurse oversight;
- (11) Staff to client ratios;
- (12) Patient restraint or seclusion;
- (13) Safety and emergency protocols;
- (14) Pharmacy services;
- (15) Medication administration; and
- (16) Reporting requirements.

(d) A crisis stabilization unit shall be designated as an emergency receiving facility under Code Sections 37-3-40 and 37-7-40 and an evaluation facility under Code Sections 37-3-60 and 37-7-60, but shall not be designated as a treatment facility under Code Section 37-3-80 or 37-7-80. Crisis stabilization units may admit individuals on a voluntary basis. Individuals may be provided 24 hour observation, detoxification and stabilization services, medication prescribed by a physician, and other appropriate treatment or services.

(e) No entity shall operate as a crisis stabilization unit without having a valid certificate issued pursuant to this Code section.

(f) Application for a certificate to operate a crisis stabilization unit shall be submitted to the department in the manner prescribed by the department's policies and procedures.

(g) The department shall issue a certificate to an applicant who meets all the standards and requirements as set forth in the department's policies and procedures for the certification of crisis stabilization units. The certificate shall be nontransferable for a change of location or governing body.

(h) Each certified crisis stabilization unit shall permit authorized department representatives to enter upon and inspect any and all premises for which a certificate has been granted or applied for.

(i) The department may deny any application for certification which does not meet all the standards and requirements set forth in the department's policies and procedures for the certification of crisis stabilization units and may suspend or revoke a certification which has been issued if an applicant or a certified crisis stabilization unit violates any such policies and procedures; provided, however, that before any order is entered denying a certification application or suspending or



revoking a certification previously granted, the applicant or certificate holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(j) Any program certified as a crisis stabilization unit pursuant to this Code section shall be exempt from the requirements to obtain a certificate of need pursuant to Article 3 of Chapter 6 of Title 31.

(k) It is the intent of the General Assembly that this Code section provide a public benefit and comply with all safety net obligations in this title and that patients without private health care coverage receive priority consideration for crisis stabilization unit placement. (Code 1981, § 37-1-29, enacted by Ga. L. 2011, p. 346, § 1/HB 343; Ga. L. 2015, p. 1062, § 1/SB 131.)

**The 2015 amendment**, effective July 1, 2015, substituted “authorized to certify” for “authorized to license” in subsection (b); in the introductory paragraph of subsection (c), in the first sentence, substituted “the certification” for “the licensure”, added “in its policies and procedures” at the end, added the second sentence, substituted “Such policies and procedures” for “Such standards and requirements” at the beginning of the third sentence; substituted “certificate” for “license” in subsections (e), (f), (h) and in two places in subsection (g); substituted “policies and procedures” for “rules and regulations” in subsection (f); in subsection (g), substituted “standards and requirements as set forth in the department’s policies and procedures for the certification” for “rules and regulations for the licensure” in the first sentence; in subsection (h), substituted “certified crisis stabilization unit” for “licensee” near the beginning and deleted “so that verification of compliance with all relevant laws or

regulations can be made” at the end; substituted the present provisions of subsection (i) for the former provisions, which read: “The department may deny any license application which does not meet all the rules and regulations for the licensure of crisis stabilization units and may suspend or revoke a license which has been issued if an applicant or a licensee violates any such rules and regulations; provided, however, that before any order is entered denying a license application or suspending or revoking a license previously granted, the applicant or license holder, as the case may be, shall be afforded an opportunity for a hearing as provided for in Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’”; substituted “certified” for “licensed” in subsection (j); and deleted former subsection (l), which read: “The department shall promulgate rules and regulations in accordance with the General Assembly’s intent as set out in subsection (k) of this Code section to implement the provisions of this Code section.”



CHAPTER 2

ADMINISTRATION OF MENTAL HEALTH,  
DEVELOPMENTAL DISABILITIES, ADDICTIVE  
DISEASES, AND OTHER DISABILITY SERVICES

Article 1		Sec.	
General Provisions		37-2-6.	Community mental health, developmental disabilities, and addictive diseases service boards — Community service board creation; membership; participation of counties; transfer of powers and duties; alternate method of establishment; bylaws; reprisals prohibited.
Sec.			
37-2-2.	Definitions.		
37-2-3.	Designation of boundaries for mental health, development disabilities, and addictive diseases regions; community service board areas.		
37-2-4.	Behavioral Health Coordinating Council; membership; meetings; obligations.	37-2-6.1.	Community service boards — Executive director, staff, budget, facilities; powers and duties; exemption from state and local taxation.
37-2-4.1.	Local mental health, developmental disabilities, and addictive diseases offices; regional mental health, developmental disabilities, and addictive disease advisory councils.	37-2-6.3.	Public body; lawsuits; debts, obligations, and liabilities.
37-2-5.	Regional advisory councils — Establishing policy and direction for disability services; membership; bylaws; meetings; expenses.	37-2-6.5.	Cessation of operations by community service board; notification; continuation of operations by successor board, county board of health, or outside manager.
37-2-5.1.	Allocation of funds.	37-2-10.	Commissioner’s emergency powers upon failure of community service board to establish and administer programs.
37-2-5.2.	Local offices — Duties, functions, and powers.		

**Law reviews.** — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

ARTICLE 1

GENERAL PROVISIONS

37-2-2. Definitions.

As used in this chapter, the term:

(1) “Community service board” means a public mental health, developmental disabilities, and addictive diseases board established pursuant to Code Section 37-2-6.



(2) “Community service board area” means an area inclusive of the counties which fall within the boundaries of a community service board as designated by the department pursuant to subsection (b) of Code Section 37-2-3 for the establishment of a community service board.

(3) “Community service board service area” means a community service board area and any other county or portion thereof in which the community service board provides services.

(4) “Council” means the Behavioral Health Coordinating Council established pursuant to Code Section 37-2-4.

(5) “Governing board” means the governing board of a community service board established pursuant to subsection (b) of Code Section 37-2-6.

(6) “Health services” means any education or service provided by the department, the Department of Public Health, or the Department of Human Services, either directly or by contract.

(7) “Hospital” means a state owned or state operated facility providing services which include, but are not limited to, inpatient care and the diagnosis, care, and treatment or habilitation of the disabled. Such hospital may also provide or manage state owned or operated programs in the community. (Code 1933, § 88-602, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1995, p. 1302, § 17; Ga. L. 2002, p. 1324, §§ 1-7, 2-2; Ga. L. 2006, p. 310, § 3/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 309, § 2/SB 349.)

**The 2014 amendment**, effective April 16, 2014, added paragraph (5) and redesignated former paragraphs (5) and (6) as present paragraphs (6) and (7), respectively.

### **37-2-3. Designation of boundaries for mental health, development disabilities, and addictive diseases regions; community service board areas.**

(a) The board shall designate boundaries for mental health, developmental disabilities, and addictive diseases regions and may modify the boundaries of such regions from time to time as deemed necessary by the board.

(b) The department, with the approval of the commissioner, shall designate community service board areas, which shall serve as boundaries for the establishment of community service boards within this state for the purpose of delivering disability services. The department shall be authorized to initiate the redesignation of such community



service board area boundaries and may consider requests from a county or group of counties or a community service board or a group of community service boards for recommended changes to the boundaries of the community service board areas. The department, with the approval of the commissioner, is authorized to redesignate two or more community service board areas as a single community service board area. Two or more community service boards may request that the department, with the approval of the commissioner, merge the community service board areas served by such boards into a single community service board area. If the department, with the approval of the commissioner, authorizes the redesignation or merging of community services board areas pursuant to this paragraph, the assets, equipment, and resources of such community service boards shall become the assets, equipment, and resources of the reconstituted community service board serving the successor single board area. It is the intent of the General Assembly not to limit a community service board to serving only those counties within the boundaries of its community service board area.

(c) To the extent practicable, the boundaries for regional planning boards and offices and community service areas shall not subdivide any county unit. In dividing the state into areas, the board and the department shall take into consideration such factors as geographic boundaries, roads and other means of transportation, population concentrations, city and county lines, other relevant community services, and community economic and social relationships. Consideration shall also be given to the existence of facilities and personnel available in the areas for the delivery of disability services. (Code 1933, § 88-604, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 4/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 309, § 3/SB 349.)

**The 2014 amendment**, effective April 16, 2014, in subsection (b), substituted “community service board areas as a single community service board area.” for “contiguous community service board areas as a single community service board area upon the request of the community service boards serving such areas; and, if so authorized” in the third sentence, added the fourth sentence, and added “If the department, with the approval

of the commissioner, authorizes the redesignation or merging of community services board areas pursuant to this paragraph” at the beginning of the fifth sentence; and in subsection (c), deleted “or conflict with any districts established by the Department of Public Health and the state relating to the planning for, or delivery of, health services” at the end of the first sentence.



**37-2-4. Behavioral Health Coordinating Council; membership; meetings; obligations.**

(a) There is created the Behavioral Health Coordinating Council. The council shall consist of the commissioner of behavioral health and developmental disabilities; the commissioner of community health; the commissioner of public health; the commissioner of human services; the commissioner of juvenile justice; the commissioner of corrections; the commissioner of community supervision; the commissioner of community affairs; the Commissioner of Labor; the State School Superintendent; the chairperson of the State Board of Pardons and Paroles; two members, appointed by the Governor; the ombudsman appointed pursuant to Code Section 37-2-32; an adult consumer of public behavioral health services, appointed by the Governor; a family member of a consumer of public behavioral health services, appointed by the Governor; a parent of a child receiving public behavioral health services, appointed by the Governor; a member of the House of Representatives, appointed by the Speaker of the House of Representatives; and a member of the Senate, appointed by the Lieutenant Governor.

(b) The commissioner of behavioral health and developmental disabilities shall be the chairperson of the council. A vice chairperson and a secretary shall be selected by the members of the council as prescribed in the council's bylaws.

(c) Meetings of the council shall be held quarterly, or more frequently, on the call of the chairperson. Meetings of the council shall be held with no less than five days' public notice for regular meetings and with such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings. All meetings of the council shall be subject to the provisions of Chapter 14 of Title 50. Minutes or transcripts shall be kept of all meetings of the council and shall include a record of the votes of each member, specifying the yea or nay vote or absence of each member, on all questions and matters coming before the council. No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the council on a recorded vote. No member of the council shall be represented by a delegate or agent.

(d) Except as otherwise provided in this Code section, a majority of the members of the council then in office shall constitute a quorum for the transaction of business. No vacancy on the council shall impair the right of the quorum to exercise the powers and perform the duties of the council. The vote of a majority of the members of the council present at the time of the vote, if a quorum is present at such time, shall be the act of the council unless the vote of a greater number is required by law or by the bylaws of the council.



(e) The council shall:

(1) Develop solutions to the systemic barriers or problems to the delivery of behavioral health services by making recommendations that implement funding, policy changes, practice changes, and evaluation of specific goals designed to improve services delivery and outcome for individuals served by the various departments;

(2) Focus on specific goals designed to resolve issues for provision of behavioral health services that negatively impact individuals serviced by at least two departments;

(3) Monitor and evaluate the implementation of established goals; and

(4) Establish common outcome measures.

(f)(1) The council may consult with various entities, including state agencies, councils, and advisory committees and other advisory groups as deemed appropriate by the council.

(2) All state departments, agencies, boards, bureaus, commissions, and authorities are authorized and required to make available to the council access to records or data which are available in electronic format or, if electronic format is unavailable, in whatever format is available. The judicial and legislative branches are authorized to likewise provide such access to the council.

(g) The council shall be attached to the Department of Behavioral Health and Developmental Disabilities for administrative purposes only as provided by Code Section 50-4-3.

(h)(1) The council shall submit annual reports of its recommendations and evaluation of their implementation to the Governor and the General Assembly.

(2) The recommendations developed by the council shall be presented to the board of each member department for approval or review at least annually.

(i) For purposes of this Code section, the term “behavioral health services” has the same meaning as “disability services” as defined in Code Section 37-1-1. (Code 1933, § 88-611, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1982, p. 3, § 37; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 6/SB 244; Ga. L. 2011, p. 705, § 5-21/HB 214; Ga. L. 2015, p. 422, § 5-58/HB 310; Ga. L. 2015, p. 617, § 1/HB 288.)

**The 2015 amendments.** — The first 2015 amendment, effective July 1, 2015, inserted “the commissioner of community supervision;” in the second sentence of subsection (a). See editor’s note for applicability. The second 2015 amendment, ef-



fective July 1, 2015, inserted “two members, appointed by the Governor;” in the second sentence of subsection (a).

**Editor’s notes.** — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General

Assembly, provides: “This Act shall become effective July 1, 2015, and shall apply to sentences entered on or after such date.”

**37-2-4.1. Local mental health, developmental disabilities, and addictive diseases offices; regional mental health, developmental disabilities, and addictive disease advisory councils.**

(a) The department may create local mental health, developmental disabilities, and addictive diseases offices. The number of these offices may be modified from time to time as deemed necessary by the department.

(b) The department shall create a separate regional mental health, developmental disabilities, and addictive diseases advisory council for each region of the department as established under Code Section 37-2-3. Each regional advisory council may provide recommendations for the coordinated and comprehensive planning for its region in conformity with minimum standards and procedures established by the department.

(c) The powers, functions, obligations, and duties of the regional mental health, mental retardation, and substance abuse boards as they existed on June 30, 2002, are transferred to the department. The department shall succeed to all rights, privileges, entitlements, contracts, leases, agreements, and other transactions of the regional boards which were in effect on June 30, 2002, and none of those rights, privileges, entitlements, contracts, leases, agreements, and other transactions shall be impaired or diminished by reason of such transfer. In all such instances, the department shall be substituted for such regional board and the department shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions. (Code 1981, § 37-2-4.1, enacted by Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2015, p. 1361, § 2/HB 512.)

**The 2015 amendment**, effective July 1, 2015, substituted “department may create local” for “department shall create regional” in the first sentence of subsection (a); and substituted the present provisions of subsection (b) for the former provisions, which read: “The department shall create a separate regional mental health, developmental disabilities, and addictive diseases planning board for each

regional office established under subsection (a) of this Code section. Each board shall provide and facilitate coordinated and comprehensive planning for its region in conformity with minimum standards and procedures established by the department. Each board shall be designated with such identifying words before the term ‘regional mental health, developmental disabilities, and addictive diseases



planning board' as that regional planning board may, from time to time, choose and designate by official action."

**37-2-5. Regional advisory councils — Establishing policy and direction for disability services; membership; bylaws; meetings; expenses.**

(a) Each regional advisory council shall engage in disability services planning within its region and may perform other functions as may be provided or authorized by law, such as:

- (1) Informing the department of local needs and priorities;
- (2) Organizing natural supports;
- (3) Recommending community improvements;
- (4) Providing input to the department regarding the local perspective of consumers, families, and community stakeholders; and
- (5) Encouraging prevention programs.

(b) Membership on the regional advisory council within an established region shall be determined as follows:

(1) Each county with a population of 50,000 or less according to the United States decennial census of 1990 or any future such census shall appoint one member to the council;

(2) Each county with a population of more than 50,000 according to the United States decennial census of 1990 or any future such census shall appoint one member for each population increment of 50,000 or any portion thereof;

(3) The appointment or appointments for each county shall be made by the county governing authority; and

(4) The county governing authority shall appoint a consumer of disability services, a family member of a consumer, an advocate for disability services, or a local leader or business person with an interest in mental health, developmental disabilities, and addictive diseases; provided, however, that for counties with more than one appointment, the county governing authority shall seek to ensure that such appointments represent various groups and disability services.

(b.1) A county governing authority may appoint the school superintendent, a member of the county board of health, a member of the local board of education, or any other elected or appointed official to serve on the regional advisory council, provided that such person meets the qualifications of paragraph (4) of subsection (b) of this Code section,



such person does not serve on a community service board, and such appointment does not violate the provisions of Chapter 10 of Title 45.

(b.2)(1) A person shall not be eligible to be appointed to or serve on a regional advisory council if such person is:

(A) A member of the community service board which serves that region;

(B) An employee or board member of a private or public entity which contracts with the department, the Department of Human Services, or the Department of Public Health to provide health, mental health, developmental disabilities, or addictive diseases services within the region;

(C) An employee of such local office or employee or board member of any private or public group, organization, or service provider which contracts with or receives funds from such local office; or

(D) An employee or board member of the department, the Department of Human Services, or the Department of Public Health.

(2) A person shall not be eligible to be appointed to or serve on a regional advisory council if such person's spouse, parent, child, or sibling is a member of that regional advisory council or a member, employee, or board member specified in paragraph (1) of this subsection. No person who has served a full term or more on a regional advisory council or regional planning board may be appointed to a community service board until a period of at least two years has passed since the time such person served on the regional advisory council or the regional planning board. No person who has served on a regional planning board and who becomes a member of a regional advisory council after June 30, 2015, may be appointed to a community service board until a period of at least two years has passed since the time such person has served on the regional planning board or regional advisory council.

(c) In making appointments to the regional advisory council, the various county governing authorities shall consider the cultural and social characteristics, including gender, race, ethnic, and age characteristics, of the regional and county populations. The county governing authorities are further encouraged to ensure that each disability group is viably represented on the regional advisory council, and in so doing the county governing authority may consider suggestions for appointments from clinical professional associations as well as advocacy groups, including but not limited to the Georgia Mental Health Consumer Network, People First of Georgia, the Georgia Parent Support



Network, National Alliance for the Mentally Ill Georgia, the American Association for Retired Persons, Georgians for Children, Mental Health America of Georgia, Georgia ARC Network, and the Georgia Council on Substance Abuse and their local chapters and affiliates.

(d) The initial term of a new member of a regional advisory council shall be determined by the commissioner in order to establish staggered terms on the council. At such time as the terms of the members of the council are equally staggered, the term of a member of the regional advisory council shall be for a period of three years and until the member's successor is appointed and qualified. A member may serve no more than two consecutive terms. The term of a regional advisory council member shall terminate upon resignation, death, or inability to serve due to medical infirmity or other incapacity or such other reasonable condition as the regional advisory council may impose under its bylaws. Vacancies on the regional advisory council shall be filled in the same manner as the original appointment.

(e) Prior to August 1, 2015, each regional advisory council shall adopt bylaws governing its operation and management. At a minimum, the bylaws shall provide for staggered terms of the council, requirements for an annual meeting to elect officers, a mechanism for ensuring that consumers of disability services and family members of consumers constitute a majority of the appointments to the council, and a mechanism for ensuring that each disability service is equitably represented by appointments to the council. Any council member who serves an initial term of less than three years may be eligible to be reappointed for two full consecutive three-year terms. The chairperson and vice chairperson of the regional advisory council shall be elected from among the members of the council to serve a term of one year with the option of reelection for an additional one-year term. The bylaws shall provide for any other officers and their means of selection, as well as any necessary committees or subcommittees of the council. Prior to their adoption by the regional advisory council, the bylaws shall be submitted to the department for review and approval. The regional advisory council must have the written approval of the commissioner prior to the adoption of bylaws.

(f) The regional advisory council shall meet not less than once every four months, beginning on July 1 and continuing through the next June 30, which time frame shall be the fiscal year for each regional advisory council.

(g) Each member of the regional advisory council may, upon approval of the department, receive reimbursement for actual expenses incurred in carrying out the duties of such office in conformance with rates and allowances set for state employees by the Office of Planning and Budget and the same mileage allowance for use of a personal car as that



received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier.

(h) Each regional advisory council which is composed of members who are appointed thereto by the governing authority of only one county shall have a minimum of six members, notwithstanding the provisions of subsection (b) of this Code section, which members shall in all other respects be appointed as provided in this Code section. (Code 1933, §§ 88-605, 88-606, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 2; Ga. L. 2000, p. 440, § 2; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2015, p. 1361, § 3/HB 512.)

**The 2015 amendment**, effective July 1, 2015, substituted “regional advisory council” for “regional planning board” and substituted “council” for “board” throughout; substituted the present provisions of subsection (a) for the former provisions, which read: “Each regional planning board shall engage in disability services planning including job supports and housing within its region and shall perform such other functions as may be provided or authorized by law.”; deleted “or” at the end of subparagraph (b.2)(1)(A); in subparagraph (b.2)(1)(C), substituted “local office” for “regional office” in two places; in paragraph (b.2)(2), substituted “regional advisory council” for “regional board” in the second sentence, in the third sentence, inserted “planning” preceding “board” near the beginning, substituted “after June 30, 2015” for “on June 30, 2002” in

the middle, and added “or regional advisory council” at the end; substituted “shall consider” for “shall ensure that appointments are reflective of” in the first sentence of subsection (c); deleted former paragraph (d)(1), which read: “In addition, members of the regional mental health, mental retardation, and substance abuse boards in office on June 30, 2002, shall become members of the regional planning board for the area in which they reside on July 1, 2002, and shall serve out the balance of their terms.”; redesignated former paragraph (d)(2) as present subsection (d); substituted “2015” for “2002” in the first sentence of subsection (e); substituted “four months” for “two months” in subsection (f); and substituted “the department” for “the regional coordinator” in subsection (g).

### **37-2-5.1. Allocation of funds.**

(a) State, federal, and other funds appropriated to the department and available for the purpose of funding the planning and delivery of disability services shall be distributed in accordance with this subsection. All funds associated with services to clients residing within a given region shall be managed through the department; the term “all funds” shall include funding for hospitals, community service boards, private and public contracts, and any contracts relating to service delivery for clients within the given region. The department shall establish a funding amount for regions conditioned upon the amount of funds appropriated. The funding amount shall be determined, in part, based on consumer service needs, service and program history, population based funding needs, infrastructure mandates, program efficiency and



effectiveness, geographic distances, and other factors affecting the cost and level of service needs within each region.

(b) The department shall establish guidelines to ensure that regions receive such funding based on client population, past and future service delivery needs and capabilities, and in consideration of special needs populations, such as homeless and transient populations. The department shall ensure that funds are managed based primarily on services to clients and in compliance with all federal, state, and regulatory requirements.

(c) The department, in compliance with the provisions of the General Appropriations Act and other applicable laws, is authorized to move funds to and between community and institutional programs based on need, and the department shall develop appropriate allocation and accounting mechanisms to move funds in a planned and rational manner between hospitals, community service boards, and other providers based on client needs and utilization. (Code 1981, § 37-2-5.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 3; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2015, p. 1361, § 4/HB 512.)

**The 2015 amendment**, effective July 1, 2015, deleted former subsection (a), which read: "Each region shall be served by a regional coordinator who shall be duly qualified and appointed by the commissioner. The regional coordinator shall serve as the supervisor of the regional office, which shall be a unit of the department. The regional coordinator shall serve at the pleasure of the commissioner. The commissioner shall be authorized to appoint an interim regional coordinator at any time that the position of regional coordinator is vacant and prior to the appointment of a duly qualified and approved successor."; deleted former subsection (b), which read: "The regional coordinator may appoint such other staff

including a regional services administrator and personnel to work for the regional office as the department deems necessary and appropriate. The regional coordinator and such staff and personnel shall be employees of the department. Expenses for the regional office and planning board, the employment of the regional coordinator, other staff and personnel, and the operation of the regional office shall be funded by the department as funds are appropriated by the General Assembly. The department shall impose limits on the administrative and operating expenditures of the regional office and planning board."; and redesignated former subsection (c) as present subsections (a) through (c).

### **37-2-5.2. Local offices — Duties, functions, and powers.**

Under the supervision of the department, each local office shall have the following duties and functions:

(1) To receive and administer gifts, moneys, and donations for purposes pertaining to mental health, developmental disability, and addictive disease services;

(2) To encourage the development, in cooperation with the department, of private and public providers of programs and disability



services which respond to the needs of consumers and families of consumers within the region;

(3) To serve as the representative of the citizens of the area in regard to disability services;

(4) To receive and consider complaints and grievances submitted by individuals, associations, or agencies involved with the delivery or receipt of disability services and, if deemed appropriate, to seek resolution in coordination with the department, through processes which may include impartial mediation and alternative dispute resolution, of such complaints and grievances with the appropriate hospital, community service board, or other private or public provider of service;

(5) To assure the highest achievable level of public awareness and understanding of both available and needed disability services;

(6) To visit regularly disability services facilities and programs which serve the region in order to assure contracted providers are licensed and accredited by the designated agencies prescribed by the department, and in order to evaluate the effectiveness and appropriateness of the services, as such services relate to the health, safety, and welfare of service recipients, and to provide technical assistance to programs in delivering services; and

(7) To participate with other local offices and planning boards, the department, local, state, or federal government agencies, educational institutions, and public and private organizations in the coordination of planning, research, service development, and evaluation activities:

(A) To work cooperatively with all units of county and local government, including the county boards of health, within the region; and

(B) To establish goals and objectives, not inconsistent with those established by the department, for its region. (Code 1981, § 37-2-5.2, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 286, § 7/SB 244; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2015, p. 1361, § 5/HB 512.)

**The 2015 amendment**, effective July 1, 2015, deleted the subsection (a) designation; substituted “local office” for “regional office” in the introductory paragraph; deleted former paragraph (a)(1), which read: “To prepare, in consultation with consumers and families, community programs, hospitals, other public and private providers, its regional planning

board, and appropriate advisory and advocacy groups, an annual plan identifying the needs and priorities for disability services in the region. The plan shall be submitted to the department at a time and in the manner specified by the department so as to ensure that the plan informs the annual appropriations request; deleted former paragraph (a)(2), which read:



“To provide, as funds become available, for consumer assessment and service authorization and coordination for each consumer receiving services within the region;”; deleted former paragraph (a)(3), which read: “To exercise responsibility and authority as specified in this chapter within the region in all matters relating to the funding and delivery of disability services;”; redesignated former paragraph (a)(4) as present paragraph (1), and, in paragraph (1), deleted “grants,” preceding “gifts”; deleted paragraph (a)(5), which read: “To enter into contracts on behalf of the department with any hospital, community service board, or other public or private providers without regard to regional or state boundaries for the provision of disability services, and to enter into all contracts on behalf of the department necessary or incidental to the performance of duties and functions of the department and regional office;”; redesignated former paragraphs (a)(6) through (a)(11) as present paragraphs (2) through (7); inserted “in coordination with the department” near the middle of paragraph (4); substituted “local offices” for “regional offices” near the beginning of the introductory paragraph (7); added “and” at the end of subparagraph (7)(A); substituted a period for “; and” at the end of subparagraph (7)(B); deleted former subparagraph

(a)(11)(C), which read: “To participate in the establishment and operation of a data base and network, coordinated by the department, to serve as a comprehensive management information system for disability services and programs.”; deleted former subsection (b), which read: “It is the express intent of this chapter to confer upon the regional offices as the administrative entities of the department the flexibility, responsibility, and authority necessary to enter into contracts on behalf of the department with a wide range of public and private providers to ensure that consumers are afforded cost-effective, locally based, and quality disability services. Under the supervision of the department, regional offices are specifically authorized to enter into contracts on behalf of the department directly with any county governing authority, any disability services organization created or designated by such county governing authority, any county board of health, any private or public provider, or any hospital for the provision of disability services.”; and deleted former subsection (c), which read: “Each regional office shall account for all funds received, expended, and administered and shall make reports to the department regarding the funds received from the department. The audit of such activity shall be part of the annual audit of the department.”

**37-2-6. Community mental health, developmental disabilities, and addictive diseases service boards — Community service board creation; membership; participation of counties; transfer of powers and duties; alternate method of establishment; bylaws; reprisals prohibited.**

(a) Community service boards in existence on June 30, 2014, are re-created effective July 1, 2014, to provide mental health, developmental disabilities, and addictive diseases services. Such community service boards may enroll and contract with the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health to become a provider of mental health, developmental disabilities, and addictive diseases services or health, recovery, housing, or other supportive services. Such boards shall be considered public agencies. Each community service board shall be a public corporation and an instrumentality of the state; provided, however, that the liabilities, debts, and obligations of a community service board shall not constitute liabilities, debts, or



obligations of the state or any county or municipal corporation and neither the state nor any county or municipal corporation shall be liable for any liability, debt, or obligation of a community service board. Each community service board re-created pursuant to this Code section is created for nonprofit and public purposes to exercise essential governmental functions. The re-creation of community service boards pursuant to this Code section shall not alter the provisions of Code Section 37-2-6.2 which shall apply to those re-created community service boards and their employees covered by that Code section and those employees' rights are retained.

(b) The governing board of each community service board shall consist of members appointed by the governing authorities of the counties within the community service board area. Membership on such governing board shall be determined as follows:

(1)(A) The governing authority of each county within the community service board area:

(i) With a population of 50,000 or less according to the most recent United States decennial census shall appoint one member to such governing board; and

(ii) With a population of more than 50,000 according to the most recent United States decennial census shall appoint one member for each population increment of 50,000 or any portion thereof; or

(B) In the event that the number of governing board member positions established in accordance with subparagraph (A) of this paragraph would exceed nine, the membership of such governing board pursuant to this subsection shall be appointed as follows and the bylaws shall be amended accordingly:

(i) For community service boards whose community service board area contains nine or fewer counties, the membership of the board shall be set at nine members and appointments to the board shall be made by the governing authority of each county within the community service board area in descending order from the county with the largest population to the county with the smallest population according to the most recent United States decennial census and this method shall be repeated until all nine members of the governing board of the community service board are appointed. If a county governing authority fails to make an appointment within a reasonable time, the next descending county by population shall make an appointment and the method shall continue; and

(ii) For community service boards whose community service board area contains more than nine counties, one member of the



governing board of the community service board shall be appointed by the governing authority of each county within the community service board area, so that the number of members on the governing board is equal to the number of counties in the community service board area.

The county governing authority shall appoint as at least one of its appointments a consumer of disability services; a psychiatrist, a psychologist, or other behavioral health or development disabilities professional; a law enforcement officer; a family member of a consumer; an advocate for disability services; a parent of a child with mental illness or addictive disease; or a local leader or businessperson with an interest in mental health, developmental disabilities, and addictive diseases; provided, however, that for counties with more than one appointment, the county governing authority shall seek to ensure that such appointments represent various groups and disability services;

(2) In addition to the members appointed pursuant to paragraph (1) of this subsection, the governing board of each community service board may appoint one additional member in order to address variation in the population sizes of counties or the financial contributions of counties within the community service board area. The bylaws of the community service board shall address the establishment of the additional governing board membership position, if established, and the purpose or purposes for which such position is created. The term of office of such additional member shall be the same as that of other members of the governing board of the community service board as provided in subsection (h) of this Code section;

(3) In addition to the members appointed pursuant to paragraphs (1) and (2) of this subsection, each governing board of a community service board shall have additional members who shall serve on such governing board while concurrently holding elective or appointive office and who shall be appointed by a county governing authority as follows:

(A) The number of elected or appointed officials serving on the governing board of a community service board shall be equal to one-third, defined herein as 33 percent or 0.33, of the number of the members of such board appointed in accordance with paragraph (1) of this subsection. In the event the calculation of such percentage yields a whole number and a fraction of a whole number, then the number of members to be appointed shall be equal to the nearest whole number; however, a fraction equal to 50 percent or greater shall be rounded to the next highest whole number;

(B) The governing authority of each county in the community service board area making the largest cash or in-kind financial



contribution in descending order to the community service board in the county fiscal year immediately prior to the time of such appointment shall make one appointment of an elected or appointed official to the community service board until the number of such appointments required by this paragraph is reached. For community service boards whose community service board areas contains fewer counties than the number of appointments made pursuant to this paragraph, the membership appointments of elected or appointed officials to the governing board shall be made in the descending order prescribed in this paragraph and this method shall be repeated until all members who hold elective or appointive office are appointed to the governing board of the community service board. In the event that the number of such county governing authorities making a cash or in-kind financial contribution to the community service board does not result in the number of appointments required by this paragraph, the remaining appointment or appointments shall be made by the governing authority or authorities of the county or counties in the community service board area with the largest population in descending order according to the most recent United States decennial census until the number of appointments required by this paragraph is reached. For community service boards whose community service board area contains three or fewer counties, the membership appointments of elected or appointed officials to the governing board shall be made in the descending order prescribed in this paragraph and this method shall be repeated until all members who hold elective or appointive office are appointed to the governing board of the community service board. In the event there is no county in the community service board area where the governing authority made a cash or in-kind financial contribution to the community service board in the county fiscal year immediately prior to the time of such appointment, the appointments required by this paragraph shall be made by the governing authority or authorities of the county or counties in the community service board area with the largest population in descending order according to the most recent United States decennial census until the number of appointments required by this paragraph is reached;

(C) As used in this paragraph, the term “elective or appointive office” or “elected or appointed official” means:

- (i) The elected chief executive officer, by whatever name called, of the county governing authority making the appointment to the governing board of the community service board;
- (ii) An elected member of such county governing authority;
- (iii) The county manager of such county governing authority where such position exists as defined in Code Section 36-5-22;



(iv) The sheriff of such county;

(v) The elected chief executive officer, by whatever named called, an elected member of the governing authority, or an appointed city manager of any municipality lying wholly or partially within such county;

(vi) A member of the board of education of such county or a member of the governing board of any municipal school system lying wholly or partially within such county;

(vii) The school superintendent of such county or the superintendent of any municipal school system lying wholly or partially within such county;

(viii) The appointed public safety commissioner, police chief, or fire chief of such county or any municipality lying wholly or partially within such county; or

(ix) Any other elected official from within such county;

(D) No member of the governing board of the community service board appointed pursuant to this paragraph shall continue to serve on the governing board if such member no longer holds the elective or appointive office which made him or her eligible for appointment to such board. The term of office of an elected official appointed to serve as a member of the governing board of a community service board shall be the same as such official's elective term of office. The term of office of an appointed official appointed to serve as a member of such governing board shall be the same as that of other members of such governing board; and

(E) As used in this paragraph, the term "in-kind financial contribution" means the most current dollar value of any physical facilities or buildings and equipment, including vehicles, of all kinds provided at no cost by the county governing authority for use by the community service board.

(4) Each community service board in existence on June 30, 2014, shall reconstitute the membership of its governing board in accordance with the provisions of paragraphs (2) and (3) of this subsection, effective July 1, 2014.

A community service board which increases or reduces the number of its members of its governing board in accordance with paragraphs (2) and (3) of this subsection shall revise its bylaws adopted in accordance with subsection (h) of this Code section to reflect such increases or reductions. A community service board which reduces the number of members of its governing board shall designate which position or positions are to be eliminated and shall make reasonable efforts to



eliminate any position or positions of governing board members whose terms expire on or before June 30, 2014; provided, however, that members serving on the governing board of a community service board whose terms do not expire on or before June 30, 2014, shall continue to serve out the terms of office to which they were appointed, regardless of whether this causes a governing board to temporarily exceed the maximum number of members. Any additional positions created in conformity with such paragraphs (2) and (3) may be filled on July 1, 2014, and the governing authority of a county that is otherwise authorized to appoint such additional member or members to the governing board of a community service board may do so no sooner than May 1, 2014, but any person so appointed shall not take office until July 1, 2014. If a position on such governing board of the community service board is not filled on July 1, 2014, a vacancy in that position shall be deemed to have occurred on that date. A governing board of the community service board is authorized to make whatever changes necessary in the terms of office of its members in order to achieve the staggering of terms required by subsection (h) of this Code section;

(5)(A) A person shall not be eligible to be appointed to or serve on a governing board of a community service board if such person is:

(i) A member of the regional planning board which serves the region in which that community service board is located;

(ii) An employee or board member of a public or private entity which contracts with the department to provide mental health, developmental disabilities, and addictive diseases services within the community service board area served by that community service board;

(iii) An employee of that community service board or employee or board member of any private or public group, organization, or service provider which contracts with or receives funds from that community service board; or

(iv) A former employee of that community service board until a period of at least two years has passed since the time such person was employed by that community service board.

(B) A person shall not be eligible to be appointed to or serve on a governing board of a community service board if such person's spouse, parent, child, or sibling is a member of that governing board or a member, employee, or board member specified in this paragraph. With respect to appointments by the same county governing authority, no person who has served a full term or more on a governing board of a community service board may be appointed to a regional planning board until a period of at least two



years has passed since the time such person served on the governing board of a community service board, and no person who has served a full term or more on a regional planning board may be appointed to the governing board of a community service board until a period of at least two years has passed since the time such person has served on the regional planning board; and

(6) A governing board of a community service board created in accordance with this subsection shall reconstitute its governing board membership in conformity with the most recent United States decennial census in accordance with subparagraph (d)(2)(C) of Code Section 1-3-1.

(b.1) A county governing authority may appoint a member of the county board of health to serve on the governing board of the community service board provided that such person meets the qualifications of paragraph (1) or (2) of subsection (b) of this Code section and such appointment does not violate the provisions of Chapter 10 of Title 45. For terms of office which begin July 1, 1994, or later, an employee of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) or an employee of a county board of health shall not serve on a governing board of a community service board. For terms of office which begin July 1, 2009, or later, an employee of the department, the Department of Human Services, the Department of Public Health, or the Department of Community Health or a board member of the respective boards of each department shall not serve on a governing board of a community service board.

(c) In making appointments to the governing board of a community service board, the county governing authorities shall ensure that such appointments are reflective of the cultural and social characteristics, including gender, race, ethnic, and age characteristics, of the community service board area and county populations. The county governing authorities are further encouraged to ensure that each disability group is represented on the governing board of the community service board, and in making such appointments the county governing authorities may consider suggestions from clinical professional associations as well as advocacy groups. For the purposes of this subsection, the term "advocacy groups" means any organizations or associations that advocate for, promote, or have an interest in disability services and are exempted as a charitable organization from federal income tax pursuant to Section 501(c) of the Internal Revenue Code; provided, however, that "advocacy groups" shall not mean paid providers of disability services or health services.

(c.1) A county governing authority in making appointments to the governing board of a community service board shall take into consid-



eration that at least one member of the governing board of a community service board is an individual who is trained or certified in finance or accounting; provided, however, that if after a reasonable effort at recruitment there is no person trained or certified in finance or accounting within the community service board area who is willing and able to serve, the county governing authority may consider for appointment any other person having a familiarity with financial or accounting practices.

(d) Each county in which the governing authority of the county is authorized to appoint members to the governing board of the community service board shall participate with the board in the operation of the program through the community service board. All contractual obligations, including but not limited to real estate leases, rentals, and other property agreements, other duties, rights, and benefits of the mental health, developmental disabilities, and addictive diseases service areas in existence on June 30, 2014, shall continue to exist along with the new powers granted to the community service boards effective July 1, 2014.

(e) Notwithstanding any other provision of this chapter, a community service board may be constituted in a method other than that outlined in subsection (b) of this Code section if:

(1) A board of health of a county desiring to be the lead county board of health for that county submits a written agreement to the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources before July 1, 1993, to serve as the community service board and to continue providing disability services in that county after July 1, 1994, and the governing authority for that county adopted a resolution stating its desire to continue the provision of disability services through its board of health after July 1, 1994, and submitted a copy of such resolution to the former division before July 1, 1993; or

(2)(A) The lead county board of health for a community mental health, mental retardation, and substance abuse service area, as designated by the former Division of Mental Health, Developmental Disabilities, and Addictive Diseases (now known as the Department of Behavioral Health and Developmental Disabilities) of the former Department of Human Resources on July 15, 1993, but which area excludes any county which meets the requirements of paragraph (1) of this subsection, submitted a written agreement to the former division and to all counties within such service area to serve as the community service board for that area and to continue providing disability services after July 1, 1994, which agreement was submitted between July 31, 1993, and December 31, 1993; and



(B) Each county governing authority which is within the service area of a lead county board of health which has submitted an agreement pursuant to subparagraph (A) of this paragraph adopted a resolution stating its desire to continue the provision of disability services through such lead county board of health after July 1, 1994, and submitted a copy of that resolution to the former division, the regional board, and the lead county board of health between July 31, 1993, and December 31, 1993; and

(3) The lead county board of health qualifying as such under paragraph (1) or (2) of this subsection agrees in writing to appoint a director for mental health, mental retardation, and substance abuse other than the director of the county board of health as stipulated in Code Section 31-3-12.1, to appoint an advisory council on mental health, mental retardation, and substance abuse consisting of consumers, families of consumers, and representatives from each of the counties within the boundaries of the community service board, and to comply with all other provisions relating to the delivery of disability services pursuant to this chapter.

(f) If the conditions enumerated in subsection (e) of this Code section are not met prior to or on December 31, 1993, a community service board as provided in subsection (b) shall be established and appointed by January 31, 1994, to govern the provision of disability services within the boundaries of the community service board. Such community service board shall have the authority to adopt bylaws and undertake organizational and contractual activities after January 31, 1994; provided, however, that the community service board established pursuant to this Code section may not begin providing services to clients until July 1, 1994.

(g) If a community service board is established pursuant to paragraph (2) of subsection (e) of this Code section, such community service board must operate as established at least until June 30, 1996; provided, however, that in each fiscal year following June 30, 1996, the counties included under the jurisdiction of such a community service board may vote to reconstitute the community service board pursuant to the provisions of subsection (b) of this Code section by passage of a resolution by a majority of the county governing authorities within the jurisdiction of the community service board prior to January 1, 1997, or each year thereafter.

(h) The governing board of each community service board shall adopt bylaws and operational policies and guidelines in conformity with the provisions of this chapter. Those bylaws shall address governing board appointment procedures, initial terms of governing board members, the staggering of terms, quorum, a mechanism for ensuring that consumers of disability services and family members of consumers constitute no



less than 50 percent of the governing board members appointed pursuant to paragraphs (1) and (2) of subsection (b) of this Code section, and a mechanism for ensuring equitable representation of the various disability groups. A quorum for the transaction of any business and for the exercise of any power or function of the governing board of the community service board shall consist of a majority of the total number of filled governing board member positions appointed pursuant to subsection (b) of this Code section. A vote of the majority of such quorum shall be the act of the governing board of the community service board except where the bylaws of the community service board may require a greater vote. The regular term of office for each member of the governing board of a community service board shall be three years. Vacancies on such governing board shall be filled in the same manner as the original appointment. For the purposes of this subsection, "equitable representation of the various disability groups" shall mean that consumers and family members of such consumers who constitute no less than 50 percent of the governing board members holding membership pursuant to paragraphs (1) and (2) of subsection (b) of this Code section shall be appointed so as to assure that an equal number of such members to the fullest extent possible represents mental health, developmental disabilities, and addictive diseases interests.

(i) The governing board of each community service board which is composed of members who are appointed thereto by the governing authority of only one county shall have a minimum of seven and no more than nine members, not including any additional members appointed pursuant to paragraphs (2) and (3) of subsection (b) of this Code section, notwithstanding the provisions of subsection (b) of this Code section, which members in all other respects shall be appointed as provided in this Code section.

(j) No governing board member, officer, or employee of a community service board who has authority to take, direct others to take, recommend, or approve any personnel action shall take or threaten action against any employee of a community service board as a reprisal for making a complaint or disclosing information concerning the possible existence of any activity constituting fraud, waste, or abuse in or relating to the programs, operations, or client services of the community service board, to the governing board of the community service board, to a member of the General Assembly, or to the department unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity. Any action taken in violation of this subsection shall give the public employee a right to have such action set aside in a proceeding instituted in the superior court.

(k) A member of a governing board of a community service board who after notice that such member has failed to complete any required



training prescribed by the department pursuant to paragraph (6) of Code Section 37-1-20 continues such failure for 30 days may be removed from office by the remaining members of the governing board of the community service board.

(l) A member of a governing board of a community service board may resign from office by giving written notice to the executive director of the community service board. The resignation is irrevocable after delivery to such executive director but shall become effective upon the date on which the notice is received or on the effective date given by the member in the notice, whichever date is later. The executive director, upon receipt of the resignation, shall give notice of the resignation to the remaining members of the governing board of the community service board and to the chief executive officer or governing authority of the county that appointed the member.

(m) The office of a member of a governing board of a community service board shall be vacated upon such member's resignation, death, or inability to serve due to medical infirmity or other incapacity, removal by the community service board as authorized in this Code section, or upon such other reasonable condition as the community service board may impose under its bylaws.

(n) Each member of the governing board of a community service board shall comply with the code of ethics for members of boards, commissions, and authorities as set forth in Code Section 45-10-3. A governing board member who fails to comply with such code may be subject to removal from office by the remaining members of the governing board of the community service board or by the commissioner as authorized in Code Section 37-2-10. The governing board of the community service board shall revise the bylaws of the community service board adopted in accordance with subsection (h) of this Code section to reflect the requirements of this subsection.

(o) A member of the governing board of a community service board shall have a fiduciary responsibility to avoid any conflict of interest in a manner that is consistent with the declarations found in Code Section 45-10-2. When such governing board is to decide an issue about which a member has an unavoidable conflict of interest, such member shall absent herself or himself from not only the vote, but also from any deliberation on such issue. Members of the governing board of a community service board shall not use their positions to obtain employment with or contracts from the community service board, its funding sources, or its suppliers of goods and services for themselves, family members, or close associates. Should such member desire such employment, such member shall first resign. No person who has served as a member of the governing board of a community service board may be employed by that community service board, either directly or by



contract, until a period of at least two years has passed since the time such person served as a member of the governing board of that community service board. A governing board member or a member of the governing board member's family may obtain disability or health services from the community service board in the ordinary course of the community service board's provision of such disability or health services on the same terms and under the same conditions applicable to any member of the public. An individual governing board member shall not exercise individual authority over the community service board's operations, affairs, property, or personnel, except when such member's action is explicitly permitted by action of the governing board of the community service board by policy or by resolution. The governing board of the community service board shall revise the bylaws of the community service board adopted in accordance with subsection (h) of this Code section to reflect the requirements of this subsection.

(p) A member of a governing board of a community service board may not enter upon the duties of office until such member takes the following oath of office:

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do solemnly swear or affirm that I will truly perform the duties of a member of the governing board of the \_\_\_\_\_ Community Service Board to the best of my ability.

I do further swear or affirm:

(1) That I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;

(2) That I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I am by the laws of the State of Georgia prohibited from holding;

(3) That I am otherwise qualified to hold said office according to the Constitution and the laws of Georgia; and

(4) That I will support the Constitution of the United States and this state.

\_\_\_\_\_  
Signature of member of  
the governing board of the  
\_\_\_\_\_ Community Service Board



\_\_\_\_\_  
Typed name of member of  
the governing board of the  
\_\_\_\_\_  
Community Service Board

Sworn and subscribed  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

(Code 1933, § 88-607, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 4; Ga. L. 1999, p. 860, § 1; Ga. L. 2002, p. 1324, §§ 1-7, 2-3; Ga. L. 2006, p. 310, § 5/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2011, p. 705, § 5-22/HB 214; Ga. L. 2014, p. 309, § 4/SB 349.)

**The 2014 amendment**, effective April 16, 2014, rewrote this Code section.  
**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2014, the second division (b)(3)(C)(vii), as added by Ga. L. 2014, p. 309, § 4/SB 349, was redesignated as division (b)(3)(C)(viii).

**37-2-6.1. Community service boards — Executive director, staff, budget, facilities; powers and duties; exemption from state and local taxation.**

(a)(1) The governing board of each community service board shall employ an executive director to serve as its chief executive officer and shall prescribe the duties thereof. The selection of the executive director and all terms of compensation shall be set by the governing board of each community service board and shall be subject to review and approval by the commissioner prior to any offer of employment or at any point thereafter where the terms of compensation are proposed to be substantially altered. Such contracts shall be reviewed by the commissioner every five years. Further, the commissioner shall be required to review and approve the selection of the executive director of each community service board for adherence to minimum qualifications for the position as prescribed by the department. The executive director shall direct the day-to-day operations of the community service board. Such executive director shall be appointed and removed by the community service board pursuant to this subsection and shall appoint other necessary staff pursuant to an annual budget adopted by the board, which budget shall provide for securing appropriate facilities, sites, and professionals necessary for the provision of disability and health services. Notwithstanding any



other provision of law to the contrary, the governing board of the community service board may delegate any power, authority, duty, or function to its executive director or other staff. The executive director or other staff is authorized to exercise any power, authority, duty, or function on behalf of the governing board of the community service board.

(2) The executive director or any full-time or part-time employee of a community service board shall have a responsibility to avoid any conflict of interest in a manner that is consistent with the declarations found in Code Section 45-10-21. Such employees shall not transact any business with that community service board as prohibited in Code Section 45-10-23 unless any such transaction falls under the exceptions granted in Code Section 45-10-25. Transactions that fall under such exceptions shall be disclosed to the governing board of the community service board in the manner as such governing board shall determine and yearly to the Georgia Government Transparency and Campaign Finance Commission as prescribed in Code Section 45-10-26. The governing board of the community service board shall promulgate policies and procedures governing executive director and employee conflicts of interest and establish a code of ethics for the executive director and employees of the community service board.

(b) The governing board of each community service board or each community service board, under the jurisdiction of its governing board, shall perform duties, responsibilities, and functions and may exercise power and authority described in this subsection as follows:

(1) The governing board of each community service board shall adopt bylaws for the conduct of its affairs and the affairs of their respective community service boards; provided, however, that the governing board of a community service board shall meet at least quarterly, and that all such meetings and any bylaws shall be open to the public, as otherwise required under Georgia law;

(2) The governing board of each community service board shall be required to review and approve the annual budget of the community service board and shall be required to establish the general policies related to such budget to be followed by the community service board;

(3) Each community service board shall provide an adequate range of disability services as prescribed by the department;

(4) Each community service board may make and enter into all contracts necessary and incidental to the performance of its duties and functions;

(5) Each community service board may acquire by purchase, gift, lease, or otherwise and may own, hold, improve, use, and sell, convey,



exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(6) Each community service board may contract to utilize the services of the Department of Administrative Services, the state auditor, or any other agency of state, local, or federal government;

(7) Each community service board may provide, either independently or through contract with appropriate state or local governmental entities, the following benefits to its employees, their dependents, and survivors, in addition to any compensation or other benefits provided to such persons:

(A) Retirement, pension, disability, medical, and hospitalization benefits, through the purchase of insurance or otherwise, but medical and hospitalization benefits may only be provided through the Department of Community Health under the same conditions as provided for such benefits to state employees, and the Department of Community Health shall so provide if requested;

(B) Life insurance coverage and coverage under federal old age and survivors' insurance programs;

(C) Sick leave, annual leave, and holiday leave; and

(D) Any other similar benefits including, but not limited to, death benefits;

(8) Each community service board may cooperate with all units of local government in the counties where the community service board provides services as well as neighboring regions and with the programs of other departments, agencies, and regional commissions and regional planning boards;

(9) Each community service board shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees; provided, however, that each community service board shall comply with the provisions of Chapter 20 of Title 45, for so long as and to the extent that each employee of such board remains subject to the rules and regulations of the State Personnel Board or as otherwise provided by law;

(10) Each community service board may receive and administer grants, gifts, contracts, moneys, and donations for purposes pertaining to the delivery of disability services or of health services;

(11) Each community service board may establish fees for the provision of disability services or health services according to the terms of contracts entered into with the department, Department of Human Services, Department of Public Health, or Department of



Community Health, as appropriate; provided, however, that all fees collected shall be used solely in accordance with the statutory nonprofit and public purposes of community service boards as prescribed in Article 1 of Chapter 2 of Title 37;

(12) Each community service board may accept appropriations, loans of funds, facilities, equipment, and supplies from local governmental entities in the counties where the community service board provides services;

(13) Each member of the governing board of a community service board may, upon approval of the executive director, receive reimbursement for actual expenses incurred in carrying out the duties of such office; provided, however, that such reimbursement shall not exceed the rates and allowances set for state employees by the Office of Planning and Budget or the mileage allowance for use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier;

(14) The governing board of each community service board shall elect a chairperson and vice chairperson from among its membership. The governing board members shall also elect a secretary and treasurer from among its membership or may designate the executive director of the community service board to serve in one or both offices. Such officers shall serve for such terms as shall be prescribed in the bylaws of the community service board or until their respective successors are elected and qualified. No governing board member shall hold more than one office of the governing board of a community service board; except that the same person may serve as secretary and treasurer. The bylaws of the governing board of a community service board shall provide for any other officers of such board and the means of their selection, the terms of office of the officers, and an annual meeting to elect officers;

(15) Each community service board may have a seal and alter it;

(16) Each community service board may establish fees, rates, rents, and charges for the use of facilities of the community service board for the provision of disability services or of health services, in accordance with the terms of contracts entered into with the department, Department of Human Services, Department of Public Health, or Department of Community Health, as appropriate;

(17) Each community service board may borrow money for any business purpose and may incur debt, liabilities, and obligations for any business purpose. A debt, liability, or obligation incurred by a community service board shall not be considered a debt, liability, or obligation of the state or any county or any municipality or any



political subdivision of the state. A community service board may not borrow money as permitted by this Code section if the highest aggregate annual debt service requirements of the then current fiscal year or any subsequent year for outstanding borrowings of the community service board, including the proposed borrowing, exceed 15 percent of the total revenues of the community service board in its fiscal year immediately preceding the fiscal year in which such debt is to be incurred. Interest paid upon such borrowings shall be exempt from taxation by the state or its political subdivisions. A state contract with a community service board shall not be used or accepted as security or collateral for a debt, liability, or obligation of a community service board without the prior written approval of the commissioner;

(18) Each community service board, to the extent authorized by law and the contract for the funds involved, may carry forward without lapse fund balances and establish operating, capital, and debt reserve accounts from revenues and grants derived from state, county, and all other sources; and

(19) Each community service board may operate, establish, or operate and establish facilities deemed by the community service board as necessary and convenient for the administration, operation, or provision of disability services or of health services by the community service board and may construct, reconstruct, improve, alter, repair, and equip such facilities to the extent authorized by state and federal law.

(c) Nothing shall prohibit a community service board from contracting with any county governing authority, private or other public provider, or hospital for the provision of disability services or of health services.

(d) Each community service board exists for nonprofit and public purposes, and it is found and declared that the carrying out of the purposes of each community service board is exclusively for public benefit and its property is public property. Thus, no community service board shall be required to pay any state or local ad valorem, sales, use, or income taxes.

(e) A community service board shall not have the power to tax, the power to issue general obligation bonds or revenue bonds or revenue certificates, or the power to financially obligate the state or any county or any municipal corporation.

(f) A community service board shall not operate any facility for profit. A community service board may fix fees, rents, rates, and charges that are reasonably expected to produce revenues, which, together with all other funds of the community service board, will be sufficient to administer, operate, and provide the following:



(1) Disability services or health services;

(2) The cost of acquiring, constructing, equipping, maintaining, repairing, and operating its facilities; and

(3) The creation and maintenance of reserves sufficient to meet principal and interest payments due on any obligation of the community service board.

(g) Each community service board may provide reasonable reserves for the improvement, replacement, or expansion of its facilities and services. Reserves under this subsection shall be subject to the limitations in paragraph (17) of subsection (b) of this Code section.

(h) Each county and municipal corporation of this state is authorized to convey or lease property of such county or municipal corporation to a community service board for its public purposes. Any property conveyed or leased to a community services board by a county or municipal corporation shall be operated by such community service board in accordance with this chapter and the terms of the community service board's agreements with the county or municipal corporation providing such conveyance or lease.

(i) Each community service board and any entity created or formed by such community service board pursuant to subsection (j) of this Code section shall keep books of account reflecting all funds received, expended, and administered by the community service board in accordance with generally accepted accounting principles. The community service board and an entity created or formed by such community service board, if any, pursuant to subsection (j) of this Code section shall assure the inclusion in its annual audit any information or procedures required by the department. The community service board and an entity created or formed by such community service board, if any, pursuant to subsection (j) of this Code section shall rotate audit firms at least once every five years. Copies of the annual audit and all findings shall be submitted to the department and the governing board of the community service board, or in the case of an entity created or formed by the community service board, if any, to the governing board of the community service board, the governing board of such entity, and the department within 60 days of completion of the audit.

(j) Subject to the approval of the commissioner and the governing board of the community service board, a community service board may create, form, or become a member of a nonprofit corporation, limited liability company, or other nonprofit entity, the voting membership of which shall be limited to community service boards, governmental entities, nonprofit corporations, or a combination thereof, if such entity is created for purposes that are within the powers of the community service board, for the cooperative functioning of its members, or a



combination thereof; provided, however, that no funds provided pursuant to a contract between the department and the community service board may be used in the formation or operation of the nonprofit corporation, limited liability company, or other nonprofit entity. No community service board, whether or not it exercises the power authorized by this subsection, shall be relieved of compliance with Chapter 14 of Title 50, relating to open and public meetings, and Article 4 of Chapter 18 of Title 50, relating to inspection of public records, unless otherwise provided by law. The provisions of this subsection relating to the approval of the commissioner to the contrary notwithstanding, nothing in this subsection shall prohibit a community service board from creating, forming, or becoming a member of a national, regional, or state trade association or business league as defined for tax exempt purposes by the United States Internal Revenue Service for the benefit of member community service boards and similar organizations.

(k) No community service board shall employ or retain in employment, either directly or indirectly through contract, any person who is receiving a retirement benefit from the Employees' Retirement System of Georgia except in accordance with the provisions of subsection (c) of Code Section 47-2-110; provided, however, that any such person who is employed as of July 1, 2004, may continue to be employed.

(l) A community service board may join or form and operate, either directly or indirectly, one or more networks of community service boards, disability or health service professionals, and other providers of disability services or health services to arrange for the provision of disability services or health services through such networks; to contract either directly or through such networks with the Department of Community Health to provide services to Medicaid beneficiaries; to provide disability services or health services in an efficient and cost-effective manner on a prepaid, capitation, or other reimbursement basis; and to undertake other disability or health services related managed care activities. For purposes of this subsection only and notwithstanding Code Section 33-3-3 or any other provision of law, a community service board shall be permitted to and shall comply with the requirements of Chapter 20A of Title 33 to the extent that such requirements apply to the activities undertaken by the community service board or by a community service board under this subsection or subsection (j) of this Code section. No community service board, whether or not it exercises the powers authorized by this subsection, shall be relieved of compliance with Article 4 of Chapter 18 of Title 50, relating to inspection of public records, unless otherwise provided by law. Any licensed health care provider shall be eligible to apply to become a participating provider under such a plan or network that provides coverage for health care, disability services, or health services which are within the lawful scope of the provider's license, but nothing



in this Code section shall be construed to require any such plan or network to provide coverage for any specific health care, disability service, or health service. (Code 1981, § 37-2-6.1, enacted by Ga. L. 1993, p. 1445, § 16; Ga. L. 1994, p. 437, § 5; Ga. L. 2002, p. 1324, §§ 1-7, 2-4, 2-5; Ga. L. 2004, p. 150, § 1; Ga. L. 2006, p. 310, § 6/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2011, p. 705, § 5-23/HB 214; Ga. L. 2012, p. 446, § 2-58/HB 642; Ga. L. 2014, p. 309, § 5/SB 349; Ga. L. 2015, p. 5, § 37/HB 90; Ga. L. 2015, p. 385, § 7-1/HB 252.)

**The 2014 amendment**, effective April 16, 2014, rewrote this Code section.

**The 2015 amendments.** — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, redesignated former paragraph (a)(1) as subsection (a.1). The second 2015 amendment, effective July 1, 2015, substituted “The governing board” for “Each governing board” throughout; designated the existing provisions of subsection (a) as paragraph (a)(1); redesignated former paragraph (a)(1) as present paragraph (a)(2); substituted “45-10-21” for “45-10-2” at the end of the first sentence of paragraph (a)(2); substituted “each community” for “a community” near the beginning of subsection (b), paragraphs (b)(1), (b)(2) and in the first sentence of paragraph (b)(14); and substituted “paragraph (17)” for “paragraph

(15)” in the last sentence of subsection (g). See the editor’s note regarding the effect of these amendments.

**Editor’s notes.** — Ga. L. 2015, p. 5, § 54(e)/HB 90, not codified by the General Assembly, provides: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2015 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to this Code section by Ga. L. 2015, p. 5, § 37/HB 90, was not given effect.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’.”

### **37-2-6.3. Public body; lawsuits; debts, obligations, and liabilities.**

(a) A community service board is a public body as provided in paragraph (1) of subsection (c) of Code Section 37-2-11.1.

(b) A community service board has the power to bring an action in its own name and, to the extent otherwise authorized by law and to the extent not immune from suit, may be sued in its own name. The state and the counties in which the community service board operates shall not be considered a party to or liable under any such litigation.

(c) The governing board of a community service board as well as the community service board itself shall be prohibited from bringing any action against the state.

(d) Debts, obligations, and liabilities of a community service board are not debts, obligations, or liabilities of the state or of the counties in which such board operates. A community service board is prohibited



from entering into debts, obligations, or liabilities which are also debts, obligations, or liabilities of the state or of any county. (Code 1981, § 37-2-6.3, enacted by Ga. L. 2002, p. 1324, § 2-6; Ga. L. 2009, p. 8, § 37/SB 46; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2014, p. 309, § 6/SB 349.)

The 2014 amendment, effective April 16, 2014, added subsection (c) and redesignated former subsection (c) as present subsection (d).

**37-2-6.5. Cessation of operations by community service board; notification; continuation of operations by successor board, county board of health, or outside manager.**

(a) By joint action of the membership of a community service board created pursuant to Code Section 37-2-6 and the governing authority of each county within the community service board area, such community service board may cease operations; provided, however, that such community service board shall notify the commissioner at least 90 days in advance of the meeting of the community service board in which such action is to be taken. Such joint action shall indicate the date on which the community service board shall cease operations.

(b) Upon receipt of notification that a community service board intends to cease operations, the commissioner shall notify the chairperson and executive director of such community service board and the governing authority of each county within the community service board area of such board that:

(1) The department, after securing the approval of the Governor, intends to appoint a manager or management team to manage and operate the programs and services of the community service board in accordance with the provisions of paragraph (1) of subsection (c) of Code Section 37-2-10 until the department shall determine:

(A) That such community service board should continue in operation, provided one or more members appointed to such board in accordance with subsection (b) of Code Section 37-2-6 shall be removed in accordance with subparagraph (c)(3)(H) of Code Section 37-2-10, and the department, acting on behalf of the membership of the community service board, nominates a successor to a removed member and advises the county governing authority that appointed such removed member to appoint a successor;

(B) That all of the members of such community service board appointed in accordance with subsection (b) of Code Section 37-2-6 shall be removed and such community service board shall be reconstituted; and that the department shall assist the county governing authorities in making appointments to the new community service board; or



(C) In the case where the membership of such community service board is the membership of a county board of health designated in accordance with Code Section 31-3-12.1 or subsection (e) of Code Section 37-2-6, that the entire membership of the community service board should be removed and the membership of the community service board be reconstituted in accordance with subsection (b) of Code Section 37-2-6;

(2) The department, with the approval of the commissioner, intends to redesignate the boundaries of the community service board area served by such board pursuant to paragraph (1) of subsection (b) of Code Section 37-2-3 by expanding the boundaries of a community service board area served by another community service board to include the counties in the community service board area served by the community service board that intends to cease operations so that the community service board serving such area may assume responsibility for the provision of disability services within such counties;

(3) The department intends to request pursuant to Code Section 31-3-12.1 that the governing authority of a county within the community service board area of such board authorize the membership of the board of health of such county to serve as the membership of such community service board; or

(4) The department, after securing the approval of the Governor, intends to appoint a manager or management team to manage and operate the programs and services of the community service board until such time as arrangements can be made to secure one or more alternate service providers to assume responsibility for the provision of services previously provided by the community service board.

(c) If a community service board ceases operation and is succeeded by another community service board pursuant to paragraph (2), a county board of health pursuant to paragraph (3), or a manager or management team pursuant to paragraph (4) of subsection (b) of this Code section, the department shall make a determination about the disposition of all assets, equipment, and resources purchased with state or federal funding in the possession of the predecessor community service board.

(d) If a community service board ceases operation and one or more alternate service providers assume responsibility for the provision of services previously provided by the community service board pursuant to paragraph (4) of subsection (b) of this Code section, the department shall petition the superior court of the county in which the principal office of that community service board was located for appointment of a receiver of the assets of the community service board for the protection of the board's creditors and the public. The receiver shall be authorized



to marshal and sell or transfer assets of the board, and, after payment of the costs, expenses, and approved fees of the proceeding, to pay the liabilities of the community service board. The court shall then decree that the board be dissolved. Upon completion of the liquidation, any surplus remaining after paying all costs of the liquidation shall be distributed, as determined by the court, to the agencies, entities, or providers providing disability services in the community service board area formerly served by the community service board which ceased operations. At no time shall any community service board upon ceasing operations convey any of its property, except as may be otherwise authorized by a superior court in this subsection, to any private person, association, or corporation. (Code 1981, § 37-2-6.5, enacted by Ga. L. 2006, p. 310, § 7/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2014, p. 309, § 7/SB 349.)

**The 2014 amendment**, effective April 16, 2014, in paragraph (b)(2), substituted “a community” for “an adjacent commu-

nity” near the middle and deleted “adjacent” preceding “area may” near the end.

### **37-2-10. Commissioner’s emergency powers upon failure of community service board to establish and administer programs.**

(a) Notwithstanding any other provisions of the law, the commissioner with the concurrence of the Governor is authorized to establish and administer community programs on an emergency basis in the event one or more community service boards or their respective governing boards fail to assume responsibility for the establishment and implementation of an adequate range of disability services or to provide appropriate disability services as determined by the department or substantially breach their contracts with the department pursuant to this chapter.

(b) Upon notification by a governing board of a community service board of an inability to provide an adequate range of disability services or to provide appropriate services, the commissioner, with concurrence of the Governor, may:

(1) Assume responsibility for the administration and operation of all of the community programs operated by or through such board and, in which case, the programs shall become department programs; the department shall acquire the assets of the community service board; the community service board employees shall become employees of the department; and the governing board of the community service board shall be dissolved; or

(2) Assume responsibility for the administration and operation of one or more of the community programs operated by or through such



board, in which case, such program or programs shall become a department program or programs; the department shall acquire those assets of the community service board assigned to such program or programs; and the employees of such program or programs shall become employees of the department. Any community service board programs not transferred to the department shall continue to be operated by the governing board of the community service board and the employees for such programs shall remain community service board employees.

(c)(1) Notwithstanding any other provisions of the law, the commissioner with the concurrence of the Governor is authorized to appoint a manager or management team to manage and operate the programs and services of the community service board if the commissioner finds that the community service board:

(A) Provides notice pursuant to Code Section 37-2-6.5 that the community service board intends to cease operations;

(B) Intentionally, recklessly, or negligently failed to discharge its duties pursuant to a contract with the department;

(C) Misused state or federal funds;

(D) Engaged in a fraudulent act, transaction, practice, or course of business;

(E) Endangered the life, safety, or health of a consumer served by the community service board;

(F) Failed to keep fiscal records and maintain proper control over its assets;

(G) Failed to respond to a substantial deficiency in a review or audit;

(H) Otherwise substantially failed to comply with this chapter or the rules or standards of the department; or

(I) No longer has the fiscal ability to continue to provide contracted services and, without the intervention of the department, continued provision of disability services or health services to consumers in the service area is in immediate jeopardy.

(2) In order to carry out the provisions of paragraph (1) of this subsection, the commissioner shall give written notice to the governing board of the community service board regarding the appointment of a manager or management team and the circumstances on which the appointment is based. The governing board of the community service board shall be immediately suspended upon the appointment of a manager or management team by the commissioner. The com-



missioner may require the community service board to pay costs incurred by the manager or management team.

(3) Subject to the determination of the commissioner, a manager or management team appointed pursuant to this subsection may:

(A) Evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of the community service board;

(B) Hire, supervise, discipline, reassign, or terminate the employment of an employee of the community service board;

(C) Reallocate the resources and manage the assets of the community service board;

(D) Require that a financial transaction, expenditure, or contract for goods and services be approved by the manager or management team;

(E) Redesign, modify, or terminate a program or service of the community service board;

(F) Direct the executive director, chief financial officer, or any other administrative or program manager, employee, or agent to take an action;

(G) Exercise a power, duty, authority, or function of the community service board or its governing board as authorized by this chapter;

(H) Recommend to the commissioner the removal of a member or members of the governing board of the community service board or the executive director of the community service board; and the provisions of any law to the contrary notwithstanding, the commissioner may remove such member or executive director from office. If the commissioner removes a member or members of the governing board of the community service board pursuant to this subparagraph, the member or members so removed shall be replaced pursuant to Code Section 37-2-6; and

(I) Report at least monthly to the commissioner on actions taken.

(4) A manager or management team appointed pursuant to this subsection may not use or dispose of any asset or funds contributed to the community service board by the governing authority of a county or municipal corporation without the approval of such governing authority.

(5) A manager or management team appointed pursuant to this subsection shall be free from all liability, joint or several, for the



manager or management team's acts, omissions, and conduct and for the acts, omissions, and conduct of their duly constituted agents in the administration of the community service board or its programs. The state shall indemnify and save them, and each of them, harmless from the effects and consequences of their acts, omissions, and conduct in their official capacity, except to the extent that such effects and consequences shall result from their own willful misconduct.

(6) If a manager or management team is appointed pursuant to this Code section, the department may:

(A) Upon a determination that the conditions that gave rise to the appointment of a manager or management team pursuant to this subsection have been met and that such manager or management team is no longer necessary, terminate the authority delegated to such manager or management team and restore authority to the governing board of the community service board to manage and operate the services and programs of the community service board; or

(B) Operate and manage the programs of the community service board until such time as arrangements can be made to secure one or more alternate service providers to assume responsibility for the provision of services previously provided by the community service board. If this option is exercised, the department shall petition the appropriate superior court for appointment of a receiver pursuant to subsection (d) of Code Section 37-2-6.5.

(7) Nothing in this subsection shall be construed to prohibit the department from canceling a contract with a community service board. (Code 1933, § 88-610, enacted by Ga. L. 1976, p. 953, § 1; Ga. L. 1986, p. 1213, § 1; Ga. L. 1993, p. 1445, § 16; Ga. L. 2002, p. 1324, § 1-7; Ga. L. 2006, p. 310, § 8/HB 1223; Ga. L. 2009, p. 453, § 3-1/HB 228; Ga. L. 2010, p. 878, § 37/HB 1387; Ga. L. 2014, p. 309, § 8/SB 349; Ga. L. 2015, p. 385, § 7-2/HB 252.)

**The 2014 amendment**, effective April 16, 2014, inserted "or their respective governing boards" in subsection (a); inserted "governing board of a" in subsection (b); in paragraph (b)(1), deleted "and" following "community service board;" in the middle and inserted "; and the governing board of the community service board shall be dissolved" near the end; inserted "governing board of the" in paragraph (b)(2); deleted "in extenuating circumstances," following "provisions of the law," near the beginning of paragraph (c)(1); substituted "the community service board" for "such board" in

subparagraph (c)(1)(A); inserted "governing board of the" in the first sentence of paragraph (c)(2) and in paragraph (c)(6)(A); added the second sentence in paragraph (c)(2); in subparagraph (c)(3)(F), deleted "the members of the community service board," following "Direct" and inserted ", employee, or agent"; inserted "or its governing board" in subparagraph (c)(3)(G); in subparagraph (c)(3)(H), inserted "or members of the governing board of the community service board" near the beginning of the first sentence and inserted the last sentence; added



paragraph (c)(5); and redesignated former paragraphs (c)(5) and (c)(6) as present paragraphs (c)(6) and (c)(7), respectively.

The 2015 amendment, effective July 1, 2015, substituted “team appointed” for “team appoint” near the beginning of the first sentence of paragraph (c)(5).

**Editor’s notes.** — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’.”

CHAPTER 3

EXAMINATION, TREATMENT, ETC., FOR MENTAL ILLNESS

Article 3	Sec.	
Examination, Hospitalization, and Treatment of Involuntary Patients		
PART 1		
EMERGENCY RECEIVING FACILITIES FOR EXAMINATION OF PERSONS APPREHENDED PURSUANT TO PHYSICIAN’S CERTIFICATE, COURT ORDER, ETC.	37-3-41.	fication or court order; report by apprehending officer; entry of treatment order into patient’s clinical record; authority of other personnel to act under statute.
Sec. 37-3-41.		(Effective until June 30, 2018. See note.) Emergency admission based on physician’s certi-

ARTICLE 1

GENERAL PROVISIONS

37-3-1. Definitions.

JUDICIAL DECISIONS

**Definition of mentally ill outpatient not met.** — There was no evidence to support a finding that without involuntary treatment, the defendant, who had a good insight into the defendant’s condition and was compliant and independently car-

ing for self, would be a danger of imminently becoming an inpatient again and thus, the defendant did not fit the definition of mentally ill outpatient. *Coogler v. State*, 324 Ga. App. 796, 751 S.E.2d 584 (2013).



**37-3-4. Immunity of hospitals, physicians, peace officers, or other private or public hospital employees from liability for actions taken in good faith compliance with admission and discharge provisions of chapter; immunity not applicable to failure to meet standard of care in provision of treatment.**

### JUDICIAL DECISIONS

**Breach of psychiatrist-patient relationship is issue of fact.** — Trial court did not err in denying a psychiatrist's motion for summary judgment in a patient's medical malpractice action because whether the psychiatrist breached duties arising from the psychiatrist-patient relationship was an issue of fact; under

O.C.G.A. §§ 37-3-4 and 51-1-27, the psychiatrist could be held liable if the treatment of the patient fell below the requisite standard of care, and that failure proximately caused the patient's injury. *Peterson v. Reeves*, 315 Ga. App. 370, 727 S.E.2d 171 (2012).

## ARTICLE 3

### EXAMINATION, HOSPITALIZATION, AND TREATMENT OF INVOLUNTARY PATIENTS

#### PART 1

#### EMERGENCY RECEIVING FACILITIES FOR EXAMINATION OF PERSONS APPREHENDED PURSUANT TO PHYSICIAN'S CERTIFICATE, COURT ORDER, ETC.

**37-3-41. (Effective until June 30, 2018. See note.) Emergency admission based on physician's certification or court order; report by apprehending officer; entry of treatment order into patient's clinical record; authority of other personnel to act under statute.**

(a) Any physician within this state may execute a certificate stating that he or she has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, such person appears to be a mentally ill person requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him or her forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he or she shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such



person into custody and deliver him or her forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is a mentally ill person requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such taking into custody shall be made a part of the patient's clinical record.

(d) Any psychologist, clinical social worker, licensed professional counselor, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, a licensed professional counselor, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this Code section, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist; the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker; the term "licensed professional counselor" means any person authorized under the laws of this state to practice as a licensed professional counselor; and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health. (Code 1933, § 88-504.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1971, p. 796, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 996, § 4; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 1.1; Ga. L. 1994, p. 1249, § 1; Ga. L. 2014, p. 347, § 1/SB 65; Ga. L. 2015, p. 4, § 1/SB 53.)



**Delayed effective date.** — This Code section, as set out above, is effective until June 30, 2018, in accordance with Ga. L. 2014, p. 347, § 2A/SB 65, as amended by Ga. L. 2015, p. 4, § 1/SB 53, which provides for the repeal of the amendment made by § 1 of that Act.

**The 2014 amendment,** effective July 1, 2014, and repealed effective March 15, 2015, in subsection (a), inserted “or she” in the first and third sentences, substituted “such person” for “the person” in the first sentence and inserted “or her” in the third sentence and near the middle of the first sentence of subsection (b); and, in subsection (d), inserted “licensed professional counselor,” in the first sentence, inserted “a licensed professional counselor,” in the

second sentence, in the third sentence, substituted “Code section” for “subsection” near the beginning, substituted a semicolon for a comma following “licensed psychologist” near the middle, and substituted “clinical social worker; the term ‘licensed professional counselor’ means any person authorized under the laws of this state to practice as a licensed professional counselor;” for “clinical social worker,” in the middle. See the delayed effective date note.

**Editor’s notes.** — Code Section 37-3-41 is set out twice in this Code. The first version is effective until June 30, 2018, and the second version becomes effective on that date.

### JUDICIAL DECISIONS

**No authority to take defendant into custody.** — Officers were not acting within the scope of their lawful authority when they took the defendant into custody because they did not have a physician’s certificate or court order as required by O.C.G.A. § 37-3-41, and it was undis-

puted that the defendant had not committed, nor was the defendant suspected of committing, a penal offense as mandated by O.C.G.A. § 37-3-42(a). *Boatright v. State*, 327 Ga. App. 785, 761 S.E.2d 176 (2014).

**37-3-41. (Effective June 30, 2018. See note.) Emergency admission based on physician’s certification or court order; report by apprehending officer; entry of treatment order into patient’s clinical record; authority of other personnel to act under statute.**

(a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be a mentally ill person requiring involuntary treatment. A physician’s certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient



and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is a mentally ill person requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such taking into custody shall be made a part of the patient's clinical record.

(d) Any psychologist, clinical social worker, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist, the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker, and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health. (Code 1933, § 88-504.2, enacted by Ga. L. 1969, p. 505, § 1; Ga. L. 1971, p. 796, § 1; Ga. L. 1978, p. 1789, § 1; Ga. L. 1981, p. 996, § 4; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 1.1; Ga. L. 1994, p. 1249, § 1; Ga. L. 2014, p. 347, §§ 1, 2A/SB 65; Ga. L. 2015, p. 4, § 1/SB 53.)

**Delayed effective date.** — This Code section, as set out above, is effective on June 30, 2018, in accordance with Ga. L. 2014, p. 347, § 2A/SB 65, as amended by Ga. L. 2015, p. 4, § 1/SB 53, which provides for the repeal of the amendment made by § 1 of that Act.

**Editor's notes.** — Code Section 37-3-41 is set out twice in this Code. The first version is effective until June 30, 2018, and the second version becomes effective on that date.



**37-3-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.**

JUDICIAL DECISIONS

**No authority to take defendant into custody.** — Officers were not acting within the scope of their lawful authority when they took the defendant into custody because they did not have a physician’s certificate or court order as required by O.C.G.A. § 37-3-41, and it was undis-

puted that the defendant had not committed, nor was the defendant suspected of committing, a penal offense as mandated by O.C.G.A. § 37-3-42(a). *Boatright v. State*, 327 Ga. App. 785, 761 S.E.2d 176 (2014).

ARTICLE 6

RIGHTS AND PRIVILEGES OF PATIENTS, THEIR REPRESENTATIVES, ETC., GENERALLY

PART 2

RIGHTS AND PRIVILEGES AS TO MANNER OF CARE AND TREATMENT  
AND AS TO MAINTENANCE AND RELEASE OF  
CLINICAL RECORDS

**Cross references.** — Medical reports in narrative form, § 24-8-826. When medical information may be released, § 24-12-1 et seq.

**37-3-162. Patients’ care and treatment rights.**

JUDICIAL DECISIONS

**Breach of duty is an issue of fact.** — Trial court did not err in denying a psychiatrist’s motion for summary judgment in a patient’s medical malpractice action because whether the psychiatrist breached duties arising from the psychiatrist-patient relationship was an issue of fact; pursuant to O.C.G.A. § 9-11-9.1, the patient presented expert testimony that the psychiatrist’s breaches of the duty of care directly resulted in the foreseeable harm of the patient’s attempt-

ing suicide. *Peterson v. Reeves*, 315 Ga. App. 370, 727 S.E.2d 171 (2012).

**Failure to commit as breach of duty of care.** — Under some circumstances, the failure to commit may constitute a breach of the well-established duty of care physicians owe patients, and when a fact question has been created on that issue, the fact question is for the jury. *Peterson v. Reeves*, 315 Ga. App. 370, 727 S.E.2d 171 (2012).



**37-3-167. Right of patient to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.**

**Cross references.** — Release of medical information generally, § 24-12-1 et seq.

**37-3-168. Right of patient’s attorney to interview physicians, psychologists, and staff attending patient; establishment of regulations as to release of information to patient’s attorney.**

**Cross references.** — Release of medical information generally, § 24-12-1 et seq.

CHAPTER 4

HABILITATION OF THE DEVELOPMENTALLY  
DISABLED GENERALLY

Article 2

Procedures for Obtaining Services  
from the Department

PART 2

COURT ORDERED SERVICES

Sec.  
37-4-40.1 through 37-4-40.5 [Repealed].

ARTICLE 2

PROCEDURES FOR OBTAINING SERVICES FROM THE  
DEPARTMENT

PART 2

COURT ORDERED SERVICES

**37-4-40.1 through 37-4-40.5.**

Repealed by Ga. L. 2011, p. 337, § 5/HB 324, effective July 1, 2011.

**Editor’s notes.** — Ga. L. 2015, p. 5, correct the Code, deleted the reservation  
§ 37/HB 90, effective March 13, 2015, of these Code sections.  
part of an Act to revise, modernize, and



**37-4-42. Procedure for continuation of court ordered habilitation.**

**Law reviews.** — For article, “Disability Constitutional Law,” see 63 Emory L.J. 527 (2014). For article, “Disability Constitutional Law,” see 63 Emory L.J. 527 (2014).

**ARTICLE 5**

**RIGHTS AND PRIVILEGES OF DEVELOPMENTALLY DISABLED PERSONS UNDERGOING HABILITATION, THEIR REPRESENTATIVES, ETC., GENERALLY**

**PART 2**

**RIGHTS AND PRIVILEGES AS TO MANNER OF HABILITATION AND AS TO MAINTENANCE AND RELEASE OF CLINICAL RECORDS**

**Cross references.** — When medical information may be released, § 24-12-1. Disclosure of medical records, § 24-12-11 et seq.

**37-4-126. Right of client to examine his records and to request correction of inaccuracies; promulgation of rules and regulations; judicial supervision of files and records relating to proceedings under this chapter.**

**Cross references.** — Release of medical information generally, § 24-12-1 et seq.

**37-4-127. Right of client’s attorney to interview persons in charge of client’s habilitation in a facility; establishment of regulations as to release of information to client’s attorney.**

**Cross references.** — Release of medical information generally, § 24-12-1 et seq.

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**CHAPTER 5**

**COMMUNITY SERVICES FOR THE DEVELOPMENTALLY DISABLED**

**Sec.**  
**37-5-10.** Timetable for implementation of this chapter [Repealed].



37-5-10. Timetable for implementation of this chapter.

Repealed by Ga. L. 2015, p. 385, § 4-7/HB 252, effective July 1, 2015.

**Editor’s notes.** — This Code section was based on Ga. L. 1972, p. 700, § 10; Ga. L. 2009, p. 453, § 3-17/HB 228. Ga. L. 2015, p. 385, § 1-1/HB 252, not

codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’.”

CHAPTER 7

HOSPITALIZATION AND TREATMENT OF ALCOHOLICS, DRUG DEPENDENT INDIVIDUALS, AND DRUG ABUSERS

Article 3

Sec.

Examination, Hospitalization, and Treatment of Involuntary Patients

PART 1

EMERGENCY RECEIVING FACILITIES FOR EXAMINATION OF PERSONS APPREHENDED PURSUANT TO PHYSICIAN’S CERTIFICATE OR COURT ORDER

See note.) Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.  
  
(Effective June 30, 2018. See note.) Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.

Sec.

37-7-41. (Effective until June 30, 2018.

ARTICLE 3

EXAMINATION, HOSPITALIZATION, AND TREATMENT OF INVOLUNTARY PATIENTS

PART 1

EMERGENCY RECEIVING FACILITIES FOR EXAMINATION OF PERSONS APPREHENDED PURSUANT TO PHYSICIAN’S CERTIFICATE OR COURT ORDER

37-7-41. (Effective until June 30, 2018. See note.) Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.

(a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48



hours and found that, based upon observations set forth in the certificate, the person appears to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such custody shall be made a part of the patient's record.

(d) Any psychologist, clinical social worker, licensed professional counselor, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, a licensed professional counselor, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this Code section, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist; the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker; the term "licensed professional coun-



selor” means any person authorized under the laws of this state to practice as a licensed professional counselor; and the term “clinical nurse specialist in psychiatric/mental health” means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric mental health. (Code 1933, § 88-404.7, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-404.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 996, § 2; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 2; Ga. L. 1994, p. 1249, § 2; Ga. L. 2014, p. 347, § 2/SB 65; Ga. L. 2015, p. 4, § 1/SB 53.)

**Delayed effective date.** — This Code section, as set forth above, is effective until June 30, 2018, in accordance with Ga. L. 2014, p. 347, § 2A/SB 65, as amended by Ga. L. 2015, p. 4, § 1/SB 53, which provides for the repeal of the amendment made by § 2 of that Act.

**The 2014 amendment,** effective July 1, 2014, and repealed effective June 30, 2018, in subsection (d), inserted “licensed professional counselor,” in the first sentence; inserted “a licensed professional counselor,” in the second sentence; and in the third sentence, substituted “Code section” for “subsection” near the beginning,

substituted a semicolon for a comma following “licensed psychologist” near the middle, and substituted “clinical social worker; the term ‘licensed professional counselor’ means any person authorized under the laws of this state to practice as a licensed professional counselor;” for “clinical social worker,” in the middle. See the delayed effective date note.

**Editor’s notes.** — Code Section 37-7-41 is set out twice in this Code. The first version is effective until June 30, 2018, and the second version becomes effective on that date.

**37-7-41. (Effective June 30, 2018. See note.) Emergency involuntary treatment; who may certify need; delivery for examination; report of delivery required.**

(a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. A physician’s certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

(b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient



and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. The court order shall expire seven days after it is executed.

(c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such custody shall be made a part of the patient's record.

(d) Any psychologist, clinical social worker, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist, the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker, and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health. (Code 1933, § 88-404.7, enacted by Ga. L. 1971, p. 273, § 1; Code 1933, § 88-404.2, enacted by Ga. L. 1978, p. 1856, § 1; Ga. L. 1981, p. 996, § 2; Ga. L. 1987, p. 3, § 37; Ga. L. 1992, p. 2531, § 2; Ga. L. 1994, p. 1249, § 2; Ga. L. 2014, p. 347, §§ 2, 2A/SB 65; Ga. L. 2015, p. 4, § 1/SB 53.)

**Delayed effective date.** — This Code section, as set forth above, is effective on June 30, 2018, in accordance with Ga. L. 2014, p. 347, § 2A/SB 65, as amended by Ga. L. 2015, p. 4, § 1/SB 53, which provides for the repeal of the amendment made by § 2 of that Act.

**Editor's notes.** — Code Section 37-7-41 is set out twice in this Code. The first version is effective until June 30, 2018, and the second version becomes effective on that date.



ARTICLE 6

RIGHTS AND PRIVILEGES OF PATIENTS, THEIR  
REPRESENTATIVES, AND OTHERS GENERALLY

PART 2

RIGHTS AND PRIVILEGES AS TO MANNER OF CARE AND TREATMENT  
AND AS TO MAINTENANCE AND RELEASE OF  
CLINICAL RECORDS

**Cross references.** — Disclosure of  
medical records, § 24-12-11 et seq.

**37-7-167. Right of patient to examine his records and to request  
correction of inaccuracies; promulgation of rules and  
regulations; judicial supervision of files and records  
relating to proceedings under this chapter.**

**Cross references.** — Release of medi-  
cal information generally, § 24-12-1 et  
seq.

**37-7-168. Right of patient's attorney to interview physician or  
psychologist and staff attending patient; establish-  
ment of regulations as to release of information to  
patient's attorney.**

**Cross references.** — Release of medi-  
cal information generally, § 24-12-1 et  
seq.



**TITLE 38**  
**MILITARY, EMERGENCY MANAGEMENT, AND**  
**VETERANS AFFAIRS**

Chap.

- 2. Military Affairs, 38-2-1 through 38-2-1145.
- 3. Emergency Management, 38-3-1 through 38-3-153.
- 4. Veterans Affairs, 38-4-1 through 38-4-72.

**CHAPTER 2**  
**MILITARY AFFAIRS**

<b>Article 1</b>		Sec.	
<b>State Militia Generally</b>		38-2-1009.	Who may order the arrest or confinement of members.
<b>PART 3</b>		38-2-1010.	Restraint of persons charged with offenses.
<b>STATE DEFENSE FORCE</b>		38-2-1011.	Confinement and imprisonment in civil jails.
Sec.		38-2-1012.	No confinement with enemy prisoners.
38-2-54.	Duties, privileges, and immunities.	38-2-1013.	Restriction on means of punishment.
<b>Article 5</b>		38-2-1014.	Delivery of offenders to civil authorities.
<b>Code of Military Justice</b>			
<b>PART 1</b>			<b>PART 3</b>
<b>GENERAL PROVISIONS</b>			<b>NONJUDICIAL PUNISHMENT</b>
38-2-1000.	Short title.		
38-2-1001.	Definitions.	38-2-1015.	Commanding officer's disciplinary punishment; regulations limiting; officers in charge; appeal; effect on more serious offenses.
38-2-1002.	Applicability; jurisdiction.		
38-2-1003.	Discharge fraudulently obtained.		
38-2-1004.	Calculating forfeiture punishments.		
38-2-1005.	Territorial applicability of article.		<b>PART 4</b>
38-2-1006.	State judge advocate; appointment; eligibility; staff judge advocate.		<b>CLASSIFICATION OF COURTS-MARTIAL</b>
<b>PART 2</b>		38-2-1016.	Classification of courts-martial.
<b>APPREHENSION AND RESTRAINT</b>		38-2-1017.	Jurisdiction of courts-martial; generally.
		38-2-1018.	General courts-martial.
		38-2-1019.	Special courts-martial.
38-2-1007.	Apprehension.	38-2-1020.	Summary courts-martial.
38-2-1008.	Reserved.	38-2-1021.	Reserved.



PART 5

CONVENING OF COURTS-MARTIAL

Sec.	
38-2-1022.	Convening of general courts-martial.
38-2-1023.	Convening of special courts-martial.
38-2-1024.	Convening of summary courts-martial.
38-2-1025.	Eligibility to serve on courts-martial.
38-2-1026.	Military judge.
38-2-1027.	Trial counsel and assistants.
38-2-1028.	Appointment of court reporters and interpreters.
38-2-1029.	Absent and additional members; not less than six members required; disability of judge.

PART 6

PRETRIAL PROCEDURE

38-2-1030.	Charges and specification.
38-2-1031.	Compulsory self-incrimination prohibited.
38-2-1032.	Investigation; cross-examination; effect of failure to perform.
38-2-1033.	Forwarding of charges.
38-2-1034.	Advice of staff judge advocate and reference for trial; corrections.
38-2-1035.	Service of copy of charges; time period before trial.

PART 7

TRIAL PROCEDURES

38-2-1036.	Governor may prescribe rules and regulations.
38-2-1037.	Unlawfully influencing action of court.
38-2-1038.	Trial counsel.
38-2-1039.	Calling court into session without presence of members; purpose.
38-2-1040.	Granting continuance.
38-2-1041.	Challenges for cause; order of presentation; peremptory challenges.
38-2-1042.	Oaths.
38-2-1043.	Statute of limitations.

Sec.	
38-2-1044.	Double jeopardy.
38-2-1045.	Pleas of accused.
38-2-1046.	Opportunity to obtain witnesses and other evidence.
38-2-1046.1.	Issuance of process and mandates; who may issue; execution.
38-2-1047.	Refusal to appear or testify; penalty.
38-2-1048.	Contempt; penalty.
38-2-1049.	Depositions.
38-2-1050.	Admissibility of records of courts of inquiry.
38-2-1050.1.	Defense of mental disease or defect.
38-2-1051.	Voting, rulings, and charge.
38-2-1052.	Number of votes required for conviction.
38-2-1053.	Prompt announcement of findings and sentence.
38-2-1054.	Trial record; contents; authentication; accused entitled to copy.

PART 8

SENTENCES

38-2-1055.	Cruel and unusual punishments prohibited.
38-2-1056.	Maximum sentencing limits.
38-2-1057.	Effective date of sentences.
38-2-1057.1.	Deferment of sentence.
38-2-1058.	Execution of confinement; discipline while in civil jails; hard labor; civil confinement according to law.
38-2-1058.1.	Reduction of pay grade.
38-2-1058.2.	Forfeiture of pay and allowances.

PART 9

REVIEW OF COURTS-MARTIAL

38-2-1059.	Effect of error of law on appeal; material prejudice; lesser included offense.
38-2-1060.	Report of findings and sentence; submission of matters for consideration to convening authority; record of trial; modification of findings and sentence; recommendation of staff judge ad-



Sec.		Sec.	
	vocate; proceeding in revision; rehearing.	38-2-1083.	Fraudulent enlistment, appointment, or separation.
38-2-1061.	Withdrawal of appeal.	38-2-1084.	Unlawful enlistment, appointment, or separation.
38-2-1062.	State may appeal certain rulings.	38-2-1085.	Desertion.
38-2-1063.	Rehearings; grounds; members of court; effect on sentence.	38-2-1086.	Absence without leave.
38-2-1064.	Guilty findings reviewed by state judge advocate.	38-2-1087.	Missing movement of ship, aircraft, or unit.
38-2-1065.	Disposition of trial records.	38-2-1088.	Contempt toward officials.
38-2-1066.	Reserved.	38-2-1089.	Disrespect toward a superior officer.
38-2-1067.	Court-martial review panel; members; rules and regulations.	38-2-1090.	Assaulting or willfully disobeying officer.
38-2-1068 and 38-2-1069.	Reserved.	38-2-1091.	Insubordination toward warrant or noncommissioned officer.
38-2-1070.	Appellate government counsel.	38-2-1092.	Failure to obey order or regulation.
38-2-1071.	Execution of sentence extending to dismissal or dishonorable or bad conduct discharge.	38-2-1093.	Cruelty and maltreatment of others under one's command.
38-2-1072.	Vacation of suspension of sentence; hearing; legal representation by military counsel; record of hearing.	38-2-1094.	Mutiny and sedition.
38-2-1073.	Petition for new trial; time period; grounds.	38-2-1095.	Resistance, breach of arrest, and escape.
38-2-1074.	Remission or suspension of sentence; modification of type of discharge by Governor.	38-2-1096.	Assistance in a prisoner's escape.
38-2-1075.	Restoration of rights, privileges, and property, in event of remission; administrative discharge; reinstatement.	38-2-1097.	Unlawful detention.
38-2-1076.	Finality of proceedings, findings, and sentences; binding effect.	38-2-1098.	Noncompliance with procedural rules; unnecessary delay.
38-2-1076.1.	Court-martial sentence requires taking leave.	38-2-1099.	Misbehavior before the enemy.
PART 10		38-2-1100.	Compelling surrender.
PUNITIVE PROVISIONS		38-2-1101.	Disclosure or improper use of countersign or parole.
38-2-1077.	Principals.	38-2-1102.	Forcing a safeguard.
38-2-1078.	Accessory after the fact.	38-2-1103.	Captured or abandoned property; trading and looting prohibited.
38-2-1079.	Conviction of lesser included offense.	38-2-1104.	Aiding the enemy.
38-2-1080.	Attempts.	38-2-1105.	Misconduct as prisoner of war.
38-2-1081.	Conspiracy.	38-2-1106.	Reserved.
38-2-1082.	Solicitation of desertion, mutiny, misbehavior before the enemy, or sedition.	38-2-1107.	Signing false official document; making false official statement.
		38-2-1108.	Military property; loss, damage, destruction, or wrongful disposition.
		38-2-1109.	Property other than military property; waste, spoilage, or destruction.
		38-2-1110.	Willful or negligent hazarding of vessel.



Sec.		Sec.	
38-2-1111.	Driving while under the influence of drugs or alcohol.	38-2-1136.	Authority to administer oaths; limitations; effect of signature.
38-2-1112.	Under the influence of alcohol while on duty.	38-2-1136.1.	Marshals; duties, powers, immunities.
38-2-1112.1.	Use, possession, manufacture, distribution, or importation of certain controlled substances; exceptions.	38-2-1137.	Explanation of Code sections to enlisted personnel.
38-2-1113.	Drunk or sleeping while standing post.	38-2-1138.	Complaints of wrongs by commanding officers.
38-2-1114.	Reserved [Repealed].	38-2-1138.1.	State administrative letter of reprimand.
38-2-1115.	Malingering; feigning illness; self-infliction of injury.	38-2-1139.	Redress of injuries to private property; complaint; investigating board; assessment.
38-2-1116.	Riot or breach of peace.	38-2-1140.	Delegation of authority by Governor.
38-2-1117.	Provoking words or gestures.	38-2-1141.	Fees and authorized travel expenses of witnesses, victims, court reporters, and interpreters.
38-2-1118 through 38-2-1130.	Reserved.	38-2-1142.	Fines for contempt; methods of collection and payment.
38-2-1131.	Perjury.	38-2-1143.	Construction with the federal Uniform Code of Military Justice.
38-2-1132.	Fraudulent claims against the government.	38-2-1144.	Immunity.
38-2-1133.	Conduct unbecoming an officer.	38-2-1145.	Severability.
38-2-1134.	General provision.		
PART 11			
MISCELLANEOUS PROVISIONS			
38-2-1135.	Courts of inquiry; composition; parties; report.		

ARTICLE 1

STATE MILITIA GENERALLY

PART 3

STATE DEFENSE FORCE

38-2-54. Duties, privileges, and immunities.

All duties imposed by the military law or other statutes of the state or by regulations issued thereunder upon units, commissioned officers, warrant officers, and enlisted personnel of the organized militia are imposed upon the units, commissioned officers, warrant officers, and enlisted personnel, respectively, of the State Defense Force. All rights, privileges, and immunities conferred by the military law or other statutes of the state or by regulations issued thereunder upon the units, commissioned officers, warrant officers, and enlisted personnel of the Georgia National Guard or of the organized militia are conferred upon the units, commissioned officers, warrant officers, and enlisted personnel, respectively, of the State Defense Force except as otherwise prescribed in this chapter. Such rights, privileges, and immunities



include relief from civil or criminal liability for acts done while on duty; rights to pay, allowances, and other compensation; expenses and subsistence; arms, uniforms, and equipment; provision, maintenance, use, and control of armories; eligibility to appointment on the military staff of the Governor; exemption from civil process and from jury duty; right of way; right to wear the uniform and to parade with firearms; and all other rights, privileges, and immunities created by statute or custom not hereinbefore specifically enumerated. (Ga. L. 1951, p. 311, §§ 34, 38, 39, 42; Ga. L. 1955, p. 10, § 59; Ga. L. 1985, p. 356, § 8; Ga. L. 2002, p. 1160, § 1; Ga. L. 2015, p. 287, § 1/SB 69.)

**The 2015 amendment**, effective July 1, 2015, deleted “; provided, however, that the provisions of Code Sections 38-2-279 and 38-2-280 shall not be applicable to personnel of the State Defense Force” from the end of the second sentence.

## ARTICLE 3

### PERSONNEL

#### PART 4

#### RIGHTS, PRIVILEGES, AND PROHIBITIONS

**38-2-280. Reemployment in private industry; various types of absences; injunction to compel; Attorney General’s aid.**

**Cross references.** — Priority of service designation for veterans and spouses, § 34-14-6.

## ARTICLE 5

### CODE OF MILITARY JUSTICE

**Effective date.** — This article became effective July 1, 2015. See editor’s note for applicability.

**Code Commission notes.** — Pursuant to Code Section 28-9-3, in 2015, the amendment to Code Section 38-2-464 by Ga. L. 2015, p. 693, § 3-32/HB 233, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 753, § 1/HB 98, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor’s notes.** — Ga. L. 2015, p. 753, § 1/HB 98, effective July 1, 2015, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sec-

tions 38-2-320 through 38-2-326, 38-2-340 through 38-2-347, 38-2-360, 38-2-370 through 38-2-376, 38-2-390 through 38-2-397, 38-2-410 through 38-2-415, 38-2-430 through 38-2-449, 38-2-460 through 38-2-464, 38-2-480 through 38-2-493, 38-2-510 through 38-2-553, and 38-2-570 through 38-2-577, relating to the Georgia Code of Military Justice, and was based on Ga. L. 1916, p. 158, § 3; Code 1933, §§ 86-1201—86-1204; Ga. L. 1951, p. 311, § 23; Ga. L. 1955, p. 10, §§ 60.1—60.116, 61.1—61.12; Ga. L. 1959, p. 114, §§ 2-6; Ga. L. 1982, p. 3, § 38; Ga. L. 1985, p. 356, §§ 9, 10; Ga. L. 1996, p. 740, § 3.

Ga. L. 2015, p. 753, § 4/HB 98, not



codified by the General Assembly provides: “This Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2015, shall be governed by the statutes in effect

at the time of such offense. The enactment of this Act shall not affect any prosecutions for acts occurring before July 1, 2015, and shall not act as an abatement of any such prosecutions.”

## PART 1

### GENERAL PROVISIONS

#### **38-2-1000. Short title.**

This article shall be known and may be cited as the “Georgia Code of Military Justice.” (Code 1981, § 38-2-1000, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1001. Definitions.**

As used in this article, the term:

(1) “Accuser” means a person who signs and swears to charges, directs that charges nominally be signed and sworn to by another, or has an interest other than an official interest in the prosecution of the accused.

(2) “Another state” means any one of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

(3) “Apprehension” means the taking of a person into custody.

(4) “Arrest” means the restraint of a person by oral or written order that is not imposed as punishment and that directs such person to remain within specified limits.

(5) “Arrest in quarters” means a punishment requiring a person to remain within his or her military residence, whether a tent, state-room, or other quarters assigned, or a private residence when government quarters have not been provided during the period of punishment.

(6) “Cadet,” “candidate,” or “midshipman” means a person enrolled in or attending a military academy, regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the organized militia.

(7) “Classified information” means any information or material that has been determined by an official of the United States or of another state, pursuant to law, an executive order, or regulation, to



require protection against unauthorized disclosure for reasons of national or state security.

(8) “Commander” means:

(A) A commissioned officer of the organized militia who is in command or who is in charge;

(B) The Governor; or

(C) The adjutant general.

(9) “Commanding officer” means a commander.

(10) “Confinement” means physical restraint imposed by order of competent authority depriving a person of freedom.

(11) “Convening authority” means the person convening the court, a successor in office, or an authorized designee of the person or successor.

(12) “Enlisted member” means a person in an enlisted grade.

(13) “Judge advocate” means an individual who is certified or designated as such by the Judge Advocate General of the United States Army or Air Force or certified by the state judge advocate as competent to perform such military justice duties required by this article. Such individual shall be a commissioned officer of the organized militia.

(14) “Military court” means a court-martial or court of inquiry.

(15) “Military judge” means an official of a general or special court-martial detailed by the convening authority.

(16) “Organized militia” means the National Guard of this state as provided for by Title 32 of the United States Code, the Georgia Naval Militia, and any other military force organized under the constitution and laws of this state when not in a status subjecting such force or forces to exclusive jurisdiction under Chapter 47 of Title 10 of the United States Code.

(17) “Record,” when used in connection with the proceedings of a court-martial, means:

(A) An official written transcript, written summary, or other writing relating to the proceedings; or

(B) An official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(18) “Senior force commander” means the assistant adjutant general for army, the assistant adjutant general for air, or the brigadier general in charge of the State Defense Force.



(19) “Superior commissioned officer” means a commissioned officer superior in rank or command. (Code 1981, § 38-2-1001, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1002. Applicability; jurisdiction.**

(a) This article shall apply to all members of the organized militia at all times and in all places when not serving as provided for by Title 10 of the United States Code.

(b)(1) Subject matter jurisdiction under this article shall be established if a nexus exists between an offense set forth in Part 10 of this article, except as provided in Code Section 38-2-1111 or 38-2-1112.1, and the organized militia. When a member is in a status as provided for by Title 32 of the United States Code or on state active duty, a rebuttable presumption exists that such nexus is established. As used in this paragraph, the term “state active duty” means full-time duty in the organized militia under an order of the Governor or otherwise issued by authority of law and paid by funds of this state, including travel to and from such duty.

(2) Courts-martial shall have primary jurisdiction of an offense set forth in Part 10 of this article, except as provided in Code Section 38-2-1111 or 38-2-1112.1.

(3) A proper civilian court shall have primary jurisdiction of a nonmilitary offense when such act or omission violates both this article and local civilian criminal law, foreign or domestic. In such case, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed such charge; provided, however, that jeopardy has not attached.

(4) Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes shall be determined by the underlying offense. (Code 1981, § 38-2-1002, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1003. Discharge fraudulently obtained.**

(a) Each person discharged from the organized militia who is later charged with having fraudulently obtained such discharge shall be, subject to Code Section 38-2-1043, subject to trial by court-martial on that charge and is, after apprehension, subject to this article while in custody under the direction of the organized militia for that trial. Upon conviction of such charge, such person shall be subject to trial by court-martial for all offenses under this article committed prior to the fraudulent discharge.

(b) No person who has deserted from the organized militia shall be relieved from amenability to the jurisdiction of this article by virtue of



a separation from any later period of service. (Code 1981, § 38-2-1003, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1004. Calculating forfeiture punishments.**

When calculating forfeiture punishments under this article for nonactive duty members of the Georgia National Guard, each unit training assembly shall constitute a day. Otherwise, any punishment authorized by this article which is measured in terms of days shall mean successive days when served in a status of annual field training and shall mean succeeding duty days when served in a status other than annual field training. (Code 1981, § 38-2-1004, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1005. Territorial applicability of article.**

(a) This article shall be applicable at all times and in all places, provided that either the person subject to this article is in a duty status or, if not in a duty status, that there is a nexus between the act or omission constituting an offense under this article and the efficient functioning of the organized militia. Such grant of military jurisdiction shall neither preclude nor limit civilian jurisdiction over an offense except when the prohibition of double jeopardy is concerned.

(b) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while those units are serving outside of this state with the same jurisdiction and powers as to persons subject to this article as if such proceedings were held inside this state, and offenses committed outside this state may be tried and punished under this article either inside or outside this state. (Code 1981, § 38-2-1005, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1006. State judge advocate; appointment; eligibility; staff judge advocate.**

(a) The Governor, on the recommendation of the adjutant general, shall appoint an individual to serve as the state judge advocate. To be eligible for such appointment, such individual shall be a judge advocate, a member of the State Bar of Georgia in good standing for not less than ten years, and have not less than five years of continuous service in the army or air National Guard of this state. The state judge advocate shall serve as the primary legal advisor to the adjutant general and shall serve as the judge advocate on the joint staff. The state judge advocate shall supervise the Office of the State Judge Advocate and shall have authority for assignment, placement, and billeting of all judge advocates.



(b) The assistant adjutant general for army, the assistant adjutant general for air, and the brigadier general in charge of the State Defense Force, on the recommendation of the state judge advocate, shall each appoint a staff judge advocate for the Army National Guard, a staff judge advocate for the Air National Guard, and a staff judge advocate for the State Defense Force, respectively. Such staff judge advocates shall serve as the respective primary legal advisors to the assistant adjutant general for army, the assistant adjutant general for air, and the brigadier general in charge of the State Defense Force.

(c) The state judge advocate, or his or her assistants, shall make frequent inspections in the field in supervision of the administration of military justice in the organized militia.

(d) Convening authorities shall at all times communicate directly with a judge advocate in the same military service in matters relating to the administration of military justice.

(e) No person who has acted as member, military judge, trial counsel, defense counsel, or investigating officer, or who has been a witness, in any case may later act in any capacity in any reviewing authority upon the same case. (Code 1981, § 38-2-1006, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

## PART 2

### APPREHENSION AND RESTRAINT

#### **38-2-1007. Apprehension.**

(a) Any person authorized by this article or Chapter 47 of Title 10 of the United States Code, or by regulations issued under either, to take persons into custody subject to this article, any marshal of a court-martial appointed pursuant to the provisions of this article, and any peace officer or civil officer having authority to take offenders into custody under the laws of the United States or of another state, may do so upon probable cause that an offense has been committed and that the person taken into custody committed it.

(b) Commissioned officers, warrant officers, petty officers, and non-commissioned officers shall have authority to quell quarrels, frays, and disorders among persons subject to this article and to take persons into custody subject to this article who take part therein.

(c) If an offender is taken into custody outside this state, the offender's return to this state shall be in accordance with normal extradition procedures or by reciprocal agreement.

(d) No person authorized by this article to take persons into custody subject to this article, or the place where such offender is confined,



restrained, held, or otherwise housed, shall require payment of any fee or charge for so receiving, apprehending, confining, restraining, holding, or otherwise housing a person except as otherwise provided by law. (Code 1981, § 38-2-1007, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1008. Reserved.**

**38-2-1009. Who may order the arrest or confinement of members.**

(a) An enlisted member may be ordered into arrest or confinement by any commander in the grade of O-4 or above by an order, oral or written, delivered in person or through any other person who is subject to this article. A commander in the grade of O-4 or above may authorize commissioned officers, warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command, or subject to the commanding officer's authority, into arrest or confinement.

(b) A commissioned officer, a warrant officer, or a civilian subject to this article or to trial thereunder may be ordered into arrest or confinement only by a commanding officer in the grade of O-6 or above to whose authority the person is subject by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement shall not be delegated.

(c) No person may be ordered into arrest or confinement except for probable cause.

(d) This article shall not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(e) The Governor, or the adjutant general under delegation by the Governor, may by written order, or regulations issued pursuant to Part 1 of Article 2 of this chapter, further limit who may order the arrest or confinement of members. (Code 1981, § 38-2-1009, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1010. Restraint of persons charged with offenses.**

Any person subject to this article who is charged with an offense under this article shall be ordered into arrest or confinement by the adjutant general, as circumstances may require. When any person subject to this article is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him or her of the specific wrong of which he or she is accused, and diligent steps shall be taken to try him or her or to dismiss the charges and release him or her. (Code 1981, § 38-2-1010, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1011. Confinement and imprisonment in civil jails.**

Confinement and imprisonment other than in a guard house, whether prior to, during, or after trial by a military court, shall be executed in jails or correctional institutions designated by the Governor, or by the adjutant general under delegation by the Governor, for that purpose. (Code 1981, § 38-2-1011, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1012. No confinement with enemy prisoners.**

No member of the organized militia shall be placed in confinement in immediate association with enemy prisoners. (Code 1981, § 38-2-1012, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1013. Restriction on means of punishment.**

No person, while being held for trial or awaiting a verdict, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him or her, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances require to insure his or her presence and the safety of others, but he or she may be subjected to minor punishment during such period for infractions of discipline. Any person placed in confinement while being held for trial or awaiting a verdict shall be given administrative credit for such time to offset any sentence subsequently imposed. (Code 1981, § 38-2-1013, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1014. Delivery of offenders to civil authorities.**

(a) A person who is subject to this article and accused of an offense against civil authority shall be delivered, upon request, to the civil authority for trial or confinement.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, and the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, the offender, after having answered to the civil authorities for the offense, shall, upon the request of competent military authority, be returned to the place of original custody for the completion of his or her sentence. (Code 1981, § 38-2-1014, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**PART 3**

**NONJUDICIAL PUNISHMENT**

**38-2-1015. Commanding officer's disciplinary punishment; regulations limiting; officers in charge; appeal; effect on more serious offenses.**

(a) Under such regulations as may be prescribed by the Governor pursuant to Part 1 of Article 2 of this chapter, or the adjutant general under delegation by the Governor, any commanding officer may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this Code section. A commanding officer's authority under this Code section shall not be delegated.

(b) As provided for by subsection (a) of this Code section, any commanding officer may impose upon enlisted members of such commanding officer's command one or more of the following punishments:

- (1) An admonition;
- (2) A reprimand;
- (3) The withholding of privileges for not more than six months, whether or not such withholding is for consecutive months;
- (4) Restitution;
- (5) The forfeiture of pay of not more than seven-day's pay;
- (6) A reduction by one grade of a member in the grade of E-4 and below;
- (7) Extra duties, including, but not limited to, fatigue duties, for not more than 14 days, whether or not such days are consecutive; and
- (8) Restriction to certain specified limits, with or without suspension from duty, for not more than 14 days, whether or not such days are consecutive.

(c) As provided for by subsection (a) of this Code section, any commanding officer in the grade of O-4 or above may impose upon enlisted members of such commanding officer's command one or more of the following punishments:

- (1) Any punishment authorized in paragraphs (1) through (4) of subsection (b) of this Code section;
- (2) The forfeiture of not more than one-half of one month's pay per month for two months;
- (3) A reduction by one grade of a member in the grade of E-6 and below;



(4) Extra duties, including, but not limited to, fatigue duties, for not more than 45 days, whether or not such days are consecutive; and

(5) Restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, whether or not such days are consecutive.

(d) As provided for by subsection (a) of this Code section, any commanding officer in the grade of O-6 or above may impose upon enlisted members of such commanding officer's command one or more of the following punishments:

(1) Any punishment authorized in paragraphs (1), (2), (4), and (5) of subsection (c) of this Code section; and

(2) A reduction by one grade of a member in the grade of E-7 and below.

(e) As provided for by subsection (a) of this Code section, the adjutant general or an officer of a general or flag rank in command may impose one or more of the following punishments:

(1) Upon commissioned or warrant officers under the command of the adjutant general or officers of a general or flag rank command:

(A) Any punishment authorized in paragraphs (1), (2), and (5) of subsection (c) of this Code section; and

(B) Arrest in quarters for not more than 30 days, whether or not such days are consecutive; and

(2) Upon enlisted members under the command of the adjutant general or officers of a general or flag rank command:

(A) Any punishment authorized in paragraph (1) of subsection (d) of this Code section; and

(B) A reduction by one grade.

(f) Whenever any of the punishments provided for by this Code section are combined to run consecutively, the total length of the combined punishment shall not exceed the authorized duration of the longest punishment in the combination, and there shall be an apportionment of punishments such that no single punishment in the combination exceeds its authorized length under this Code section.

(g)(1) The officer who imposes punishment under this Code section, or such officer's successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. Such officer may also:

(A) Mitigate reduction in grade to forfeiture of pay;



(B) Mitigate arrest in quarters to restriction; or

(C) Mitigate extra duties to restriction.

(2) The mitigated punishment under this subsection shall not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this Code section by the officer who imposed the punishment mitigated.

(h) A person punished under this Code section who considers the punishment unjust or disproportionate to the offense may through the proper channel appeal to the next superior authority within 30 days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority shall exercise the same powers with respect to the punishment imposed as may be exercised under subsection (g) of this Code section by the officer who imposed the punishment. Before acting on an appeal from a punishment, the authority who is to act on the appeal may refer the case to a judge advocate for consideration and advice.

(i) The imposition and enforcement of disciplinary punishment under this Code section for any act or omission shall not be a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this Code section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(j) Whenever a punishment of forfeiture of pay is imposed under this Code section, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

(k) Regulations issued pursuant to Part 1 of Article 2 of this chapter may prescribe the form of records to be kept of proceedings under this Code section and may prescribe that certain categories of those proceedings shall be in writing.

(l) No member has the right to decline nonjudicial punishment under this Code section and to demand any type of court-martial. (Code 1981, § 38-2-1015, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



## PART 4

## CLASSIFICATION OF COURTS-MARTIAL

**38-2-1016. Classification of courts-martial.**

There shall be three kinds of courts-martial in the organized militia:

(1) General courts-martial, which shall consist of:

(A) A military judge and not less than six members; or

(B) Only a military judge, if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed of only a military judge and the military judge approves;

(2) Special courts-martial, which shall consist of:

(A) A military judge and not less than six members; or

(B) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those provided for in subparagraph (B) of paragraph (1) of this Code section so requests; and

(3) Summary courts-martial, consisting of one commissioned officer. (Code 1981, § 38-2-1016, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1017. Jurisdiction of courts-martial; generally.**

Each force of the organized militia has court-martial jurisdiction over all members of the particular force of the organized militia who are subject to this article. The Georgia Army National Guard and the Georgia Air National Guard shall have court-martial jurisdiction over all members subject to this article. (Code 1981, § 38-2-1017, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1018. General courts-martial.**

Subject to Code Section 38-2-1017, general courts-martial shall have jurisdiction to try persons subject to this article for any offense made punishable by this article, and shall, under such limitations as the Governor may prescribe pursuant to Part 1 of Article 2 of this chapter, adjudge any one or more of the following punishments not otherwise forbidden by this article:

(1) Confinement for a period of not more than ten years;



- (2) Restriction to specified limits for not more than six months;
- (3) Dismissal, dishonorable discharge, or bad conduct discharge;
- (4) Forfeiture of all or a portion of pay and allowances;
- (5) Restitution;
- (6) Reduction to the lowest or any intermediate pay grade of enlisted persons;
- (7) A reprimand; and
- (8) No punishment. (Code 1981, § 38-2-1018, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1019. Special courts-martial.**

Subject to Code Section 38-2-1017, special courts-martial shall have jurisdiction to try persons subject to this article for any offense made punishable by this article, and shall, under such limitations as the Governor, or the adjutant general by delegation of the Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter, adjudge any one or more of the following punishments not otherwise forbidden by this article:

- (1) Confinement for a period of not more than one year;
- (2) Restriction to specified limits for not more than six months;
- (3) Bad conduct discharge;
- (4) Forfeiture of all or a portion of pay and allowances for not more than one year;
- (5) Restitution;
- (6) Reduction to the lowest or any intermediate pay grade of enlisted persons;
- (7) A reprimand; and
- (8) No punishment. (Code 1981, § 38-2-1019, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1020. Summary courts-martial.**

(a) Subject to Code Section 38-2-1017, summary courts-martial shall have jurisdiction to try persons subject to this article, except for commissioned or warrant officers, cadets, candidates, and midshipmen, for any offense made punishable by this article under such limitations as the Governor, or the adjutant general by delegation of the Governor,



may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(b) No person with respect to whom summary courts-martial shall have jurisdiction may be brought to trial before a summary court-martial if he or she objects thereto. If objection to trial by summary court-martial is made by an accused, trial by special or general court-martial shall be ordered, as may be appropriate. Summary courts-martial shall, under such limitations as the Governor, or the adjutant general by delegation of the Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter, adjudge any one or more of the following punishments not otherwise forbidden by this article:

- (1) Confinement for a period of not more than one month;
- (2) Restriction to specified limits for not more than two months;
- (3) Forfeiture of all or a portion of pay and allowances for not more than 60 days;
- (4) Restitution;
- (5) Reduction of no more than two grades of enlisted persons;
- (6) A reprimand; and
- (7) No punishment. (Code 1981, § 38-2-1020, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1021. Reserved.**

PART 5

CONVENING OF COURTS-MARTIAL

**38-2-1022. Convening of general courts-martial.**

(a) General courts-martial may be convened by the Governor. The Governor may delegate the authority to convene general courts-martial to the adjutant general, but such authority shall not be delegated further.

(b) If the Governor is the accuser, the general court-martial shall be convened by the Lieutenant Governor.

(c) For administrative purposes other than the actual convening of a general court-martial, the adjutant general shall be considered the general court-martial convening authority. (Code 1981, § 38-2-1022, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1023. Convening of special courts-martial.**

(a) Special courts-martial may be convened by the Governor, the adjutant general, the assistant adjutant general for army, or the assistant adjutant general for air.

(b) If any individual in subsection (a) of this Code section is an accuser, the special court-martial shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority. (Code 1981, § 38-2-1023, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1024. Convening of summary courts-martial.**

(a) Summary courts-martial may be convened by:

(1) Any person authorized to convene a special court-martial under subsection (a) of Code Section 38-2-1023; or

(2) Any commander in the grade of O-6 or above.

(b) If any individual listed in subsection (a) of this Code section is an accuser, the summary court-martial shall be convened by superior competent authority and may in any case be convened by such superior authority if considered desirable by such authority.

(c) The Governor, or the adjutant general by delegation of the Governor, may, by written order, further limit who may convene actions under this Code section. (Code 1981, § 38-2-1024, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1025. Eligibility to serve on courts-martial.**

(a) For purposes of this Code section, the term “unit” means any regularly organized body of the organized militia not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

(b) Any commissioned officer of the organized militia shall be eligible to serve on all courts-martial for the trial of any person who is subject to this article.

(c) Any warrant officer of the organized militia shall be eligible to serve on general and special courts-martial for the trial of any person who is subject to this article, other than a commissioned officer.

(d) Any enlisted member of the organized militia who is not a member of the same unit as the accused shall be eligible to serve on general and special courts-martial for the trial of any enlisted member who is subject to this article, but such enlisted member shall serve as a



member of a court only if, before the conclusion of a session called by the military judge under Code Section 38-2-1039 prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court shall be assembled and the trial held without such enlisted members, but the convening authority shall make a detailed written statement, to be appended to the record, stating why such number of enlisted members could not be obtained.

(e) No person who is subject to this article shall be tried by a court-martial any member of which is junior to the accused in rank or grade.

(f) When convening a court-martial, the convening authority shall detail as members thereof such members of the organized militia as, in the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the organized militia shall be eligible to serve as a member of a general or special court-martial when that member is the accuser, a witness, or has acted as investigating officer or as counsel in the same case.

(g) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. The convening authority may delegate the authority under this subsection to a judge advocate or to any other principal assistant. (Code 1981, § 38-2-1025, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1026. Military judge.**

(a) A military judge shall be detailed to each general and special court-martial by the authority convening a general or special court-martial. The military judge shall preside over each open session of the court-martial to which the military judge has been detailed.

(b) A military judge shall be:

(1) An active or retired commissioned officer of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof;



(2) A member in good standing of the bar of the highest court of another state or a member of the bar of a federal court for at least five years; and

(3) Certified as qualified for duty as a military judge by the judge advocate general of the army, air force, or navy and the state judge advocate.

(c) In the instance when a military judge is not a member of the bar of the highest court of this state, the military judge shall be deemed admitted pro hac vice, subject to filing a certificate with the state judge advocate setting forth such qualifications as provided for in subsection (b) of this Code section.

(d) The military judge of a general or special court-martial shall be designated by the state judge advocate, or a designee, for detail by the convening authority. Neither the convening authority nor any primary staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.

(e) Whenever possible, the military judge of a general or special court-martial shall be of the same branch of service as the accused.

(f) No person shall be eligible to act as military judge in a case if that person is the accuser or a witness or has acted as investigating officer or a counsel in the same case.

(g) The military judge of a court-martial shall not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel and shall not vote with the members of the court.

(h) If no person who meets the qualifications to serve as military judge under this Code section is readily available in the sole discretion of the state judge advocate, a law officer shall be appointed. A law officer may serve in place of a military judge provided he or she meets the qualifications as provided for in paragraphs (1) and (2) of subsection (b) of this Code section and is approved for such service, in writing, by the state judge advocate. (Code 1981, § 38-2-1026, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2015, a period was added at the end of paragraph (b)(3).



**38-2-1027. Trial counsel and assistants.**

(a)(1) For each general and special court-martial the convening authority shall detail a trial counsel and such assistants as appropriate.

(2) For each general and special court-martial, if the United States Army Trial Defense Services or a similar entity exists, such entity shall detail defense counsel and such assistants as are appropriate. If no appropriate such entity exists, the convening authority shall detail defense counsel and such assistants as are appropriate.

(3) No person who has acted as investigating officer, military judge, a witness, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Except as provided in subsection (c) of this Code section, trial counsel or defense counsel detailed for a general or special court-martial shall be a judge advocate.

(c) In the instance where a defense counsel is not a member of the bar of the highest court of this state, the defense counsel shall be deemed admitted pro hac vice, subject to filing a certificate with the military judge setting forth the qualifications that counsel is:

(1) A commissioned officer of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof;

(2) A member in good standing of the bar of the highest court of another state; and

(3) Certified as a judge advocate in the judge advocate general's corps of the army, air force, navy, or the marine corps.

(d) Nothing in this Code section shall preclude the accused from hiring a civilian attorney who is a member of the bar of this state or who has been admitted pro hac vice. Such attorney shall serve the accused at no cost to another state or the federal government. (Code 1981, § 38-2-1027, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1028. Appointment of court reporters and interpreters.**

Under such regulations as may be prescribed by the Governor pursuant to Part 1 of Article 2 of this chapter, the convening authority of a general or special court-martial or court of inquiry shall detail or



employ qualified court reporters who shall record the proceedings of and testimony taken before that court. Under like regulations, the convening authority may detail or employ interpreters who shall interpret for the court. (Code 1981, § 38-2-1028, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1029. Absent and additional members; not less than six members required; disability of judge.**

(a) No member of a general or special court-martial shall be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below six members, the trial shall not proceed unless the convening authority details new members sufficient in number to provide not less than six members. The trial shall proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below six members, the trial shall not proceed unless the convening authority details new members sufficient in number to provide not less than six members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of subparagraph (B) of paragraphs (1) and (2) of Code Section 38-2-1016, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides. (Code 1981, § 38-2-1029, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



## PART 6

## PRETRIAL PROCEDURE

**38-2-1030. Charges and specification.**

(a) Charges and specifications shall be signed by a person subject to this article under oath before a commissioned officer authorized by Code Section 38-2-1136 to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That the same are true in fact to the best of the signer's knowledge and belief.

(b) Upon the preferring of charges, the convening authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

(c) The preferring of charges and findings and sentence of a general court-martial or special court-martial, or other disposition of the charges of the general court-martial or special court-martial, shall be reported to the Georgia Crime Information Center. The Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter the means, manner, and methods of such reporting to the Georgia Crime Information Center. (Code 1981, § 38-2-1030, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1031. Compulsory self-incrimination prohibited.**

(a) No person subject to this article shall compel any person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate him or her.

(b) No person subject to this article shall interrogate or request any statement from an accused or a person suspected of an offense without first informing him or her of the nature of the accusation and advising him or her that he or she does not have to make any statement regarding the offense of which he or she is accused or suspected and that any statement made by him or her may be used as evidence against him or her in a trial by court-martial.

(c) No person subject to this article shall compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade him or her.

(d) No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful induce-



ment shall be received in evidence against him or her in a trial by court-martial. (Code 1981, § 38-2-1031, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1032. Investigation; cross-examination; effect of failure to perform.**

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made unless such investigation has been waived in writing by the accused after consultation with his or her defense counsel. Such investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him or her and of the right to be represented at the investigation provided for by subsection (a) of this Code section by counsel. The accused has the right to be represented at such investigation as provided in Code Section 38-2-1038 and in regulations prescribed under that Code section. At such investigation, full opportunity shall be given to the accused to cross-examine witnesses against him or her, if they are available, and to present anything relevant he or she may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available relevant witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Code section, no further investigation of that charge shall be necessary under this Code section unless it is demanded by the accused after he or she is informed of the charge. A demand for further investigation shall entitle the accused to recall witnesses for further cross-examination and to offer any new relevant evidence in the accused's own behalf.

(d) If evidence adduced in an investigation under this Code section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused is:

- (1) Present at the investigation;



(2) Informed of the nature of each uncharged offense investigated; and

(3) Afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Code section.

(e) The requirements of this Code section shall be binding on all persons administering this article, but failure to follow them shall not constitute jurisdictional error. (Code 1981, § 38-2-1032, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1033. Forwarding of charges.**

When a person is held for trial by general court-martial, the commanding officer shall, within three days after the accused is ordered into arrest or confinement, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. (Code 1981, § 38-2-1033, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1034. Advice of staff judge advocate and reference for trial; corrections.**

(a) Before directing the trial of any charge by general or special court-martial, the convening authority shall refer it to the staff judge advocate of the service of the accused for consideration and advice. The convening authority shall not refer a specification under a charge to a general or special court-martial for trial unless the convening authority has been advised in writing by the staff judge advocate of the service of the accused that:

(1) The specification alleges an offense under this article;

(2) The specification is warranted by the evidence indicated in the report of investigation as provided for under Code Section 38-2-1032, if there is such a report; and

(3) A court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) of this Code section with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(1) Expressing conclusions with respect to each matter set forth in subsection (a) of this Code section; and

(2) Recommending action that the convening authority take regarding the specification.



If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made. (Code 1981, § 38-2-1034, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1035. Service of copy of charges; time period before trial.**

The trial counsel shall serve or cause to be served upon the accused a copy of the charges. No person shall, against his or her objection, be brought to trial before a general court-martial case within a period of five days after the service of charges upon him or her, or before a special court-martial case within a period of three days after the service of charges upon him or her. (Code 1981, § 38-2-1035, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**PART 7**

**TRIAL PROCEDURES**

**38-2-1036. Governor may prescribe rules and regulations.**

Pretrial, trial, and post-trial procedures, including, but not limited to, modes of proof, for courts-martial cases arising under this article and for courts of inquiry shall be prescribed by the Governor, or the adjutant general by delegation of the Governor, by regulations issued pursuant to Part 1 of Article 2 of this chapter, or as otherwise provided by law, which shall apply the principles of law generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this article. (Code 1981, § 38-2-1036, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1037. Unlawfully influencing action of court.**

(a) No authority convening a general, special, or summary court-martial nor any other commanding officer or officer serving on the staff thereof may censure, reprimand, or admonish such court or any member, the military judge, counsel, or witness thereof with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or his or her functions in the conduct of the proceedings. No person subject to this article shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member thereof in reaching the findings or



sentence in any case or the action of any convening, approving, or reviewing authority with respect to their judicial acts.

(b) Subsection (a) of this Code section shall not apply with respect to:

(1) General instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or

(2) Statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(c) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced in grade, of determining the assignment or transfer of a member of the organized militia, or of determining whether a member of the organized militia should be retained on active status, no person subject to this article shall, in preparing any such report:

(1) Consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein; or

(2) Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.  
(Code 1981, § 38-2-1037, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1038. Trial counsel.**

(a) The trial counsel of a general or special court-martial shall be a member in good standing of the State Bar of Georgia and shall prosecute in the name of this state and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused shall have the right to be represented in defense before a general or special court-martial or at an investigation under Code Section 38-2-1032 as provided for in this subsection.

(2) The accused may be represented by civilian counsel at the provision and expense of the accused.

(3) Except as otherwise provided in this Code section, the accused shall be represented by:

(A) Military counsel as provided for under Code Section 38-2-1027; or

(B) Military counsel of the accused's own selection if such counsel is reasonably available as determined under paragraph (7) of this subsection.



(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) of this subsection shall act as associate counsel if requested in writing by the accused; provided, however, that if no such request in writing is made, military counsel detailed under paragraph (3) of this subsection shall be excused.

(5) Except as provided under paragraph (6) of this subsection, if the accused is represented by military counsel of his or her own selection under subparagraph (b)(3)(B) of this Code section, any military counsel detailed under subparagraph (b)(3)(A) of this Code section shall be excused.

(6) The accused shall not be entitled to be represented by more than one military counsel; provided, however, that the person authorized under regulations prescribed under Code Section 38-2-1027 to detail counsel, in such person's sole discretion:

(A) May detail additional military counsel as assistant defense counsel; and

(B) If the accused is represented by military counsel of the accused's own selection under subparagraph (b)(3)(B) of this Code section, may approve a request from the accused that military counsel detailed under subparagraph (b)(3)(A) of this Code section act as associate defense counsel.

(7) The staff judge advocate of the same force of the accused shall determine whether the military counsel selected by an accused is reasonably available.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel may:

(1) Forward for attachment to the record of proceedings a brief of such matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which such counsel considers appropriate;

(2) Assist the accused in the submission of any matter under Code Section 38-2-1060; and

(3) Take other action as authorized by this article. (Code 1981, § 38-2-1038, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1039. Calling court into session without presence of members; purpose.**

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members,



the military judge shall, subject to Code Section 38-2-1035, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this article, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) Holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which does not require the presence of the members of the court under this article.

(b) The proceedings as provided for by subsection (a) of this Code section shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. Such proceedings shall be conducted notwithstanding the number of court members and without regard to Code Section 38-2-1029.

(c) When the members of a court-martial deliberate or vote, only the members shall be present. All other proceedings, including, but not limited to, any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge. (Code 1981, § 38-2-1039, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1040. Granting continuance.**

The military judge of a court-martial or a summary court-martial officer may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just. (Code 1981, § 38-2-1040, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1041. Challenges for cause; order of presentation; peremptory challenges.**

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, if one, or the court shall determine the relevancy and validity of challenges for cause and shall not receive a challenge to more than one person at a time.



Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by Code Section 38-2-1016, all parties shall, notwithstanding Code Section 38-2-1029, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court; provided, however, that peremptory challenges shall not be exercised at such time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge shall not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by Code Section 38-2-1016, the parties shall, notwithstanding Code Section 38-2-1029, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(3) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge. (Code 1981, § 38-2-1041, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1042. Oaths.**

(a) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation to perform their duties faithfully. The form of such oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which such duties are to be performed or for a particular case, shall be as prescribed in regulations issued pursuant to Part 1 of Article 2 of this chapter or as provided by law. Such regulations shall provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined under oath or affirmation. (Code 1981, § 38-2-1042, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1043. Statute of limitations.**

(a) A person charged with desertion or absence without leave in time of armed conflict or war, whether or not declared, or with aiding the enemy or with mutiny shall be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with any offense shall not be liable to be tried by court-martial or punished under Code Section 38-2-1015 if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under Code Section 38-2-1015.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this Code section.

(d) Periods in which the accused was absent from territory in which this state has the authority to take the accused into custody, or in which such accused is in the custody of civil authorities or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Code section.

(e)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period of limitation prescribed by this Code section has expired or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications shall not be barred by the period of limitation prescribed by this Code section if the conditions specified in paragraph (2) of this subsection are met.

(2) The conditions provided for by paragraph (1) of this subsection shall be that the new charges and specifications shall:

(A) Be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications. (Code 1981, § 38-2-1043, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1044. Double jeopardy.**

(a) No person shall, without his or her consent, be tried a second time for the same offense.



(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be a trial in the sense of this Code section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused shall be a trial in the sense of this Code section. (Code 1981, § 38-2-1044, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1045. Pleas of accused.**

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. Such finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event, the proceedings shall continue as though the accused had pleaded not guilty. (Code 1981, § 38-2-1045, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1046. Opportunity to obtain witnesses and other evidence.**

The trial counsel, the defense counsel, and the summary court-martial officer shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter. (Code 1981, § 38-2-1046, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1046.1. Issuance of process and mandates; who may issue; execution.**

(a) Military courts are empowered to issue all process and mandates necessary and proper to carry into full effect the powers vested in the courts. The courts shall have power to issue subpoenas for the attendance of witnesses and subpoenas for the production of documentary



evidence and to enforce by attachment attendance of witnesses and production of books, records, and other documentary evidence.

(b) Such process and mandates may be issued by military judges, summary courts-martial, provost courts, the president of other military courts, and boards of officers; may be directed to and may be executed by any sheriff, the marshals of the military court, or any peace officer; and shall be in such form as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(c) It shall be the duty of all officers to whom process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same. Except as otherwise specifically provided in this article, no such officer shall demand or require payment of any fee or charge of any nature for receiving, executing, or returning any process or mandate or for any services in connection therewith. (Code 1981, § 38-2-1046.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1047. Refusal to appear or testify; penalty.**

(a) Any person not subject to this article who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court of inquiry or before any military or civil officer designated to take a deposition to be read in evidence before such court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court of this state; and

(3) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce

shall be punished by the military court in the same manner as a criminal court of this state.

(b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses or other appropriate funds. (Code 1981, § 38-2-1047, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1048. Contempt; penalty.**

(a) A military judge may punish for contempt any person who uses any menacing word, sign, or gesture in his or her presence, or who disturbs the proceedings of the military court by any riot or disorder.



(b) A person subject to this article may be punished for contempt by confinement not to exceed 30 days or a fine of \$1,000.00, or both.

(c) A person not subject to this article may be punished for contempt by a military court in the same manner as a criminal court of this state. (Code 1981, § 38-2-1048, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1049. Depositions.**

(a) At any time after charges have been signed as provided for in Code Section 38-2-1030, the military judge or summary court-martial officer, with approval of the state judge advocate, may allow a party to take oral or written depositions for good cause.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition, and such party may attend and participate in the deposition.

(c) Depositions shall be taken before and authenticated by any military or civil officer authorized by the laws of this state or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if it appears that:

(1) The witness resides or is beyond another state in which the court is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) The witness, by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) The present whereabouts of the witness are unknown. (Code 1981, § 38-2-1049, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1050. Admissibility of records of courts of inquiry.**

(a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue



was involved or if the accused consents to the introduction of such evidence.

(b) In any case extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained may, if otherwise admissible under the rules of evidence, be read in evidence only by the defense.

(c) Such testimony as provided for in subsections (a) and (b) of this Code section may be read in evidence before a court of inquiry in like manner as provided for in subsections (a) and (b) of this Code section. (Code 1981, § 38-2-1050, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1050.1. Defense of mental disease or defect.**

(a) It shall be an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect shall not otherwise constitute a defense.

(b) The accused has the burden of proving the defense as provided for by subsection (a) of this Code section by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall follow the procedures set forth in Code Section 17-7-131. (Code 1981, § 38-2-1050.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1051. Voting, rulings, and charge.**

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused shall be final and shall constitute the ruling of the court; provided, however, that the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Code Section 38-2-1052, beginning with the member junior in rank.



(c) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them that:

(1) The accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt;

(2) In the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(3) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) The burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this Code section shall not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it shall be sufficient if the findings of fact appear therein. (Code 1981, § 38-2-1051, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1052. Number of votes required for conviction.**

(a) No person shall be convicted of an offense, except:

(1) As provided in Code Section 38-2-1045;

(2) By the vote of two-thirds of the members;

(3) By a summary court-martial officer; or

(4) If a court-martial is composed of a military judge only, by decision of the military judge.

(b) If two-thirds of the members of a court-martial composed of members do not vote for a conviction, the accused shall be acquitted.

(c)(1) All questions other than the questions provided for under subsections (a) and (b) of this Code section to be decided by the members of a general or special court-martial shall be determined by a majority vote; provided, however, that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, shall be made by any lesser vote which



indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

(2) A tie vote on a challenge shall disqualify the member challenged.

(3) A tie vote on a motion relating to the question of the sanity of the accused shall be a determination against the accused.

(4) A tie vote on a question other than the questions provided for under paragraphs (2) and (3) of this subsection shall be a determination in favor of the accused. (Code 1981, § 38-2-1052, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1053. Prompt announcement of findings and sentence.**

A court-martial shall announce its findings and sentence to the parties as soon as determined. (Code 1981, § 38-2-1053, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1054. Trial record; contents; authentication; accused entitled to copy.**

(a) Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his or her death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his or her death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b)(1) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction.

(2) In all court-martial cases other than as provided for by paragraph (1) of this subsection, the record shall contain such matters as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter.

(c) Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter.



(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. (Code 1981, § 38-2-1054, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

PART 8

SENTENCES

**38-2-1055. Cruel and unusual punishments prohibited.**

Punishment by flogging or by branding, marking, or tattooing on the body or any other cruel or unusual punishment shall not be adjudged by a court-martial or inflicted upon any person subject to this article. The use of irons, single or double, except for the purpose of safe custody, is prohibited. (Code 1981, § 38-2-1055, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1056. Maximum sentencing limits.**

(a) The punishment which a court-martial may direct for an offense shall not exceed such limits as prescribed by this article, but in no instance shall a sentence exceed more than ten years nor shall a sentence of death be adjudged. A conviction by general court-martial of any offense for which an accused may receive a sentence of confinement for more than one year shall be a felony offense. Except for convictions by a summary court-martial, all other convictions shall be misdemeanors. Any conviction by a summary court-martial shall not be a criminal conviction.

(b) The limits of punishment for violations of this article prescribed herein shall be the lesser of the sentences prescribed by the manual for courts-martial of the United States in effect on January 1, 2015, if such manual contains the offense, and any regulations or manual for courts-martial adopted in this state pursuant to Code Section 38-2-1036, but in no instance shall any punishment exceed that authorized by this article. (Code 1981, § 38-2-1056, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1057. Effective date of sentences.**

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture shall apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before that date.



(b) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All sentences of courts-martial, except as provided for by subsections (a) and (b) of this Code section, shall be effective on the date ordered executed. (Code 1981, § 38-2-1057, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1057.1. Deferment of sentence.**

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned may, in that person's sole discretion, defer service of the sentence to confinement. Such deferment shall terminate when the sentence is ordered executed. Such deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)(1) In any case in which a court-martial sentences an accused as provided for in paragraph (2) of this subsection to confinement, the convening authority shall defer the service of the sentence to confinement, without the consent of the accused, until after the accused has been permanently released to the organized militia by another state, the United States, or a foreign country referred to in that paragraph.

(2) Paragraph (1) of this subsection shall apply to a person subject to this article who:

(A) While in the custody of another state, the United States, or a foreign country is temporarily returned by such state, the United States, or a foreign country to the organized militia for trial by court-martial; and

(B) After the court-martial, is returned to such state, the United States, or a foreign country under the authority of a mutual agreement or treaty, as the case may be.

(c) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under Code Section 38-2-1067 is pending, the adjutant general may defer further service of the sentence



**38-2-1057.1 MILITARY, EMERGENCY & VETERANS AFFAIRS 38-2-1058.2**

to confinement while that review is pending. (Code 1981, § 38-2-1057.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1058. Execution of confinement; discipline while in civil jails; hard labor; civil confinement according to law.**

(a) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, shall be carried into execution by confinement in any place authorized by this article. Persons so confined shall be subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(b) The omission of hard labor as a sentence authorized under this article shall not deprive a confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(c) No place of confinement shall require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law. (Code 1981, § 38-2-1058, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1058.1. Reduction of pay grade.**

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable or bad conduct discharge or confinement shall reduce that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of an enlisted member who is reduced in pay grade under subsection (a) of this Code section is set aside or disapproved, or, as finally approved, does not include any punishment named in paragraphs (1) and (2) of subsection (a) of this Code section, the rights and privileges of which the person was deprived because of that reduction shall be restored, including, but not limited to, pay and allowances. (Code 1981, § 38-2-1058.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1058.2. Forfeiture of pay and allowances.**

(a)(1) A court-martial sentence as provided for in paragraph (2) of this subsection shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. Such forfeiture pursuant to this Code section shall take effect on the date determined under Code Section 38-2-1057 and may be deferred as provided by that Code section. The pay and allowances



forfeited shall be all pay and allowances due that member during such period.

(2) A sentence covered by this subsection shall be any sentence that includes:

(A) Confinement for more than six months; or

(B) Confinement for six months or less and a dishonorable or bad conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under Code Section 38-2-1060 may waive any or all of the forfeitures of pay and allowances required by subsection (a) of this Code section for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) of this Code section is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in paragraph (2) of subsection (a) of this Code section, the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect. (Code 1981, § 38-2-1058.2, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

## PART 9

### REVIEW OF COURTS-MARTIAL

#### **38-2-1059. Effect of error of law on appeal; material prejudice; lesser included offense.**

(a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense. (Code 1981, § 38-2-1059, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1060. Report of findings and sentence; submission of matters for consideration to convening authority; record of trial; modification of findings and sentence; recommendation of staff judge advocate; proceeding in revision; rehearing.**

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 30 days after the accused has been given an authenticated record of the trial and, if applicable, the recommendation of the staff judge advocate of the service of the accused under subsection (d) of this Code section. In a summary court-martial case, such a submission shall be made within 30 days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters as provided for in paragraph (1) of this subsection, the convening authority or other person taking action under this Code section, for good cause, may extend the applicable period under paragraph (1) of this subsection for not more than an additional 60 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing the submission as provided for by paragraph (1) of this subsection.

(4) The accused may waive the right to make a submission to the convening authority as provided for by paragraph (1) of this subsection. Such a waiver shall be made in writing and may not be revoked. For the purposes of paragraph (2) of subsection (c) of this Code section, the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this Code section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. If it is impractical for the convening authority to act, the convening authority shall forward the case to a person exercising general court-martial jurisdiction who may take action under this Code section.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this



Code section. Such action may be taken only after consideration of any matters submitted by the accused under subsection (b) of this Code section or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in that person's sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence shall not be required; provided, however, that such person, in the person's sole discretion may:

(A) Dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this Code section on any general or special court-martial case in which there is a finding of guilt, the convening authority or other person taking action under this Code section shall obtain and consider the written recommendation of the staff judge advocate of the service of the accused. The convening authority or other person taking action under this Code section shall refer the record of trial to the staff judge advocate, and the staff judge advocate shall use such record in the preparation of the recommendation. The recommendation of the staff judge advocate shall include such matters as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter and shall be served on the accused, who may submit any matter as provided for by subsection (b) of this Code section. Failure to object in the response to the recommendation or to any matter attached to the recommendation shall waive the right to object thereto.

(e)(1) The convening authority or other person taking action under this Code section, in the person's sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision as provided for by paragraph (1) of this subsection may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(A) Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of this article; or



(C) Increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this Code section if that person disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves of the findings and sentence and does not order a rehearing, that person shall dismiss the charges. A rehearing as to the findings shall not be ordered where there is a lack of sufficient evidence in the record to support such findings. A rehearing as to the sentence shall be ordered if the convening authority or other person taking action under this subsection disapproves the sentence. (Code 1981, § 38-2-1060, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1061. Withdrawal of appeal.**

(a) In each case subject to appellate review under this article, the accused may file with the convening authority a statement expressly withdrawing the right of the accused to such appeal. Such a withdrawal shall be signed by both the accused and his or her defense counsel and shall be filed in accordance with appellate procedures as provided by law.

(b) The accused may withdraw an appeal at any time in accordance with appellate procedures as provided by law. (Code 1981, § 38-2-1061, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1062. State may appeal certain rulings.**

(a)(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state may appeal the following, other than a finding of not guilty with respect to the charge or specification by the members of the court-martial or by a judge in a bench trial so long as it is not made in reconsideration:

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification;

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding;

(C) An order or ruling which directs the disclosure of classified information;

(D) An order or ruling which imposes sanctions for nondisclosure of classified information;

(E) A refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information; and



(F) A refusal by the military judge to enforce an order described in subparagraph (E) of this paragraph that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this Code section shall be diligently prosecuted as provided by law.

(b) An appeal under this Code section shall be forwarded to the court prescribed in Code Section 38-2-1067. In ruling on an appeal under this Code section, such court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this Code section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. (Code 1981, § 38-2-1062, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1063. Rehearings; grounds; members of court; effect on sentence.**

Each rehearing under this article shall take place before a court-martial composed of members who were not members of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial. (Code 1981, § 38-2-1063, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1064. Guilty findings reviewed by state judge advocate.**

(a) Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the state judge advocate or



his or her designee who shall be a judge advocate. The state judge advocate shall not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense; the state judge advocate shall assign review of such case to a designee who shall not have acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense. Such review of the state judge advocate or his or her designee shall be in writing and shall contain the following:

(1) Conclusions as to whether:

- (A) The court had jurisdiction over the accused and the offense;
- (B) The charge and specification stated an offense; and
- (C) The sentence was within the limits prescribed as a matter of law;

(2) A response to each allegation of error made in writing by the accused; and

(3) If the case is sent for action under subsection (b) of this Code section, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) of this Code section shall be sent for action to the adjutant general, if:

(1) The judge advocate who reviewed the case recommends corrective action;

(2) The sentence approved under Code Section 38-2-1060 extends to dismissal, a bad conduct or dishonorable discharge, or confinement for more than six months; or

(3) Such action is otherwise required by regulations pursuant to Part 1 of Article 2 of this chapter.

(c)(1) If a record of trial is sent to the adjutant general under subsection (b) of this Code section, the adjutant general may:

(A) Disapprove or approve the findings or sentence, in whole or in part;

(B) Remit, commute, or suspend the sentence in whole or in part;

(C) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings or on the sentence, or both; or



(D) Dismiss the charges.

(2) If a rehearing is ordered by the adjutant general but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) If the opinion of the state judge advocate, or designee, in the state judge advocate's, or designee's, review under subsection (a) of this Code section is that corrective action is required as a matter of law and if the adjutant general does not take action that is at least as favorable to the accused as that recommended by the state judge advocate, the record of trial and action thereon shall be sent to the Governor for review and action as deemed appropriate.

(d) The state judge advocate, or his or her designee who shall be a judge advocate, may review any case in which there has been a finding of not guilty of all charges and specifications. If the state judge advocate has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense, the state judge advocate may assign such case to a designee who has not acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense and who shall determine whether a review shall be conducted under this subsection. Such review of the state judge advocate or of his or her designee shall be limited to questions of subject matter jurisdiction.

(e) The record of trial and related documents in each case reviewed under subsection (d) of this Code section shall be sent for action to the adjutant general; the adjutant general may:

(1) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the state, as the adjutant general deems appropriate; or

(2) Return the record of trial and related documents to the state judge advocate or his or her designee for appeal by the state as provided by law. (Code 1981, § 38-2-1064, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1065. Disposition of trial records.**

Except as otherwise required by this article, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulations issued pursuant to Part 1 of Article 2 of this chapter. (Code 1981, § 38-2-1065, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1066. Reserved.**



**38-2-1067. Court-martial review panel; members; rules and regulations.**

(a)(1) There shall be the court-martial review panel which shall hear appeals of decisions of a court-martial.

(2) The Governor shall appoint five persons to serve as judges on the court-martial review panel. Four such judges shall be retired commissioned officers of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof and a member in good standing of the State Bar of Georgia. One such judge shall be a member in good standing of the State Bar of Georgia and shall not be a member, former member, or retired member of the organized militia or state military force of another state or of the armed forces of the United States or a reserve component thereof.

(3) The Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter the convening and administration of the court-martial review panel and the compensation provided to the judges of such panel.

(b)(1) An appeal to the court-martial review panel shall only be made after action on the sentence of a court-martial by the convening authority or by another person authorized to take such action as provided for in Code Section 38-2-1060 or after a decision of the convening authority to deny a petition for a new trial as provided for by Code Section 38-2-1073 or pursuant to Code Section 38-2-1062. Such appeals shall be made within 30 days after such action or decision.

(2) The court-martial review panel shall dispose of each appeal within 90 days of such appeal made thereto. The court-martial review panel shall deliver its decision to the state judge advocate and, within three days, the state judge advocate shall serve a copy of such decision to the accused by statutory overnight delivery. The decision of the court-martial review panel shall be final for purposes of an appeal to the appellate courts of this state on the date that the state judge advocate mails the decision to the accused.

(c) Any party to a proceeding before the court-martial review panel may secure a review of the final decision of the court-martial review panel by appeal in the manner and form provided by law for appeals from the superior courts to the appellate courts of this state. (Code 1981, § 38-2-1067, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1068 and 38-2-1069. Reserved.**



**38-2-1070. Appellate government counsel.**

(a) The state judge advocate shall detail a judge advocate as appellate government counsel to represent the state in the review or appeal of cases provided for in Code Section 38-2-1067 and before any federal court when requested to do so by the attorney general. Appellate government counsel shall be a member in good standing of the bar of the highest court of this state.

(b) Upon an appeal by the state, the accused shall have the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(c) Upon an appeal by an accused, the accused shall have the right to be represented by military counsel before any reviewing authority.

(d) Upon the request of an accused entitled to be so represented, the senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections (b) and (c) of this Code section.

(e) An accused may be represented by civilian appellate counsel at no expense to the state. (Code 1981, § 38-2-1070, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1071. Execution of sentence extending to dismissal or dishonorable or bad conduct discharge.**

(a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn under Code Section 38-2-1061, that part of the sentence extending to dismissal or a dishonorable or bad conduct discharge shall not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to the legality of the proceedings shall be final in such cases when review is completed by an appellate court as provided for in Code Section 38-2-1067 and is deemed final by the law of this state.

(b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived or an appeal is withdrawn under Code Section 38-2-1061, that part of the sentence extending to dismissal or a dishonorable or bad conduct discharge shall not be executed until review of the case by the state judge advocate and any action on that review under Code Section 38-2-1064 is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under Code Section 38-2-1060 when so approved under that Code section.



(c) The convening authority may suspend the execution of any sentence or part thereof. (Code 1981, § 38-2-1071, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1072. Vacation of suspension of sentence; hearing; legal representation by military counsel; record of hearing.**

(a) Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of probation. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed subject to applicable restrictions in this article.

(c) The suspension of any other sentence may be vacated by any authority competent to convene for the command in which the accused is serving or assigned a court of the kind that imposed the sentence. (Code 1981, § 38-2-1072, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1073. Petition for new trial; time period; grounds.**

(a) At any time within five years after approval by the convening authority of a court-martial sentence, the accused may petition the convening authority for a new trial. Some good reason, including but not limited to newly discovered evidence or fraud on the court-martial, must be shown as to why the petition should be granted.

(b) The decision of the convening authority provided for under subsection (a) of this Code section shall be appealable as provided for under Code Section 38-2-1067. (Code 1981, § 38-2-1073, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1074. Remission or suspension of sentence; modification of type of discharge by Governor.**

(a) Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the unexecuted part of any sentence, including, but not limited to, all uncollected forfeitures, other than a sentence approved by the Governor.



(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial. (Code 1981, § 38-2-1074, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1075. Restoration of rights, privileges, and property, in event of remission; administrative discharge; reinstatement.**

(a) Under such regulations as may be prescribed pursuant to this chapter, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad conduct discharge is not imposed on a new trial, the Governor may substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor may substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had the former officer not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the Governor may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including, but not limited to, the right to pay and allowances. (Code 1981, § 38-2-1075, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1076. Finality of proceedings, findings, and sentences; binding effect.**

The appellate review of records of trial provided by this article, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this article, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this article shall be final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings shall be binding upon all departments, courts, agencies, and officers of the



United States and officers of another state subject only to action upon a petition for a new trial as provided in Code Section 38-2-1073 and to action under Code Section 38-2-1074. (Code 1981, § 38-2-1076, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1076.1. Court-martial sentence requires taking leave.**

Under regulations prescribed pursuant to Part 1 of Article 2 of this chapter, an accused who has been sentenced by a court-martial shall be required to take leave pending completion of action under this Code section if the sentence as approved under Code Section 38-2-1060 includes an unsuspended dismissal or an unsuspended dishonorable or bad conduct discharge. The accused shall be required to begin such leave on the date on which the sentence is approved under Code Section 38-2-1060 or at any time after such date, and such leave shall be continued until the date on which action under this Code section is completed or may be terminated at any earlier time. (Code 1981, § 38-2-1076.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

## **PART 10**

### **PUNITIVE PROVISIONS**

### **38-2-1077. Principals.**

Any person subject to this article who:

(1) Commits an offense punishable by this article or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by that person would be punishable by this article

is a principal. (Code 1981, § 38-2-1077, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1078. Accessory after the fact.**

Any person subject to this article who, knowing that an offense punishable by this article has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court-martial may direct. (Code 1981, § 38-2-1078, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1079. Conviction of lesser included offense.**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense



charged or an offense necessarily included therein. (Code 1981, § 38-2-1079, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1080. Attempts.**

(a) An act, done with specific intent to commit an offense under this article, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

(b) Any person subject to this article who attempts to commit any offense punishable by this article shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this article may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. (Code 1981, § 38-2-1080, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1081. Conspiracy.**

Any person subject to this article who conspires with any other person to commit an offense under this article shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct. (Code 1981, § 38-2-1081, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1082. Solicitation of desertion, mutiny, misbehavior before the enemy, or sedition.**

(a) Any person subject to this article who solicits or advises another or others to desert in violation of Code Section 38-2-1085 or mutiny in violation of Code Section 38-2-1094 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

(b) Any person subject to this article who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Code Section 38-2-1099 or sedition in violation of Code Section 38-2-1094 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense; but, if the offense solicited or advised is not committed, the person shall be punished as a court-martial may direct. (Code 1981, § 38-2-1082, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1083. Fraudulent enlistment, appointment, or separation.**

Any person who:

(1) Procures his or her own enlistment or appointment in the organized militia by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his or her own separation from the organized militia by knowingly false representation or deliberate concealment as to his or her eligibility for that separation

shall be punished as a court-martial may direct. (Code 1981, § 38-2-1083, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1084. Unlawful enlistment, appointment, or separation.**

Any person subject to this article who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to him or her to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. (Code 1981, § 38-2-1084, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1085. Desertion.**

(a) Any member of the organized militia shall be guilty of desertion who:

(1) Without authority goes or remains absent from his or her unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from the organized militia, enlists or accepts another appointment in the organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that the member has not been regularly separated, or enters any foreign armed service except when authorized by the United States.

(b) Any commissioned officer of the organized militia who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently shall be guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished by:



(1) Confinement of not more than ten years or such other punishment as a court-martial may direct if the offense is committed in time of war; or

(2) Punishment as a court-martial may direct if the offense occurs at any time other than in time of war. (Code 1981, § 38-2-1085, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1086. Absence without leave.**

Any person subject to this article shall be punished as a court-martial may direct who, without authority:

(1) Fails to go to his or her appointed place of duty at the time prescribed;

(2) Goes from his or her place of duty; or

(3) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which the person is required to be at the time prescribed. (Code 1981, § 38-2-1086, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1087. Missing movement of ship, aircraft, or unit.**

Any person subject to this article who through neglect or design misses the movement of a ship, aircraft, or unit with which the person is required in the course of duty to move shall be punished as a court-martial may direct. (Code 1981, § 38-2-1087, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1088. Contempt toward officials.**

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the secretary of a military department, the Secretary of Homeland Security, or the Governor or General Assembly shall be punished as a court-martial may direct. (Code 1981, § 38-2-1088, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1089. Disrespect toward a superior officer.**

Any person subject to this article who behaves with disrespect toward his or her superior commissioned officer shall be punished as a court-martial may direct. (Code 1981, § 38-2-1089, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1090. Assaulting or willfully disobeying officer.**

Any person subject to this article who:



(1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against said superior commissioned officer while he or she is in the execution of his or her office; or

(2) Willfully disobeys a lawful command of his or her superior commissioned officer

shall be punished, if the offense is committed in time of war, by confinement of not more than ten years or such other punishment as a court-martial may direct, or if the offense is committed at any time other than a time of war, by such punishment as a court-martial may direct. (Code 1981, § 38-2-1090, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1091. Insubordination toward warrant or noncommissioned officer.**

Any warrant officer or enlisted member shall be punished as a court-martial may direct who:

(1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer while that officer is in the execution of his or her office;

(2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer while that officer is in the execution of his or her office. (Code 1981, § 38-2-1091, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1092. Failure to obey order or regulation.**

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the organized militia, which it is his or her duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his or her duties. (Code 1981, § 38-2-1092, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1093. Cruelty and maltreatment of others under one's command.**

Any person subject to this article who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders



shall be punished as a court-martial may direct. (Code 1981, § 38-2-1093, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1094. Mutiny and sedition.**

(a) Any person subject to this article who:

(1) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance shall be guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority shall be guilty of sedition; or

(3) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which the person knows or has reason to believe is taking place, shall be guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct. (Code 1981, § 38-2-1094, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1095. Resistance, breach of arrest, and escape.**

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Resists apprehension;

(2) Flees from apprehension;

(3) Breaks arrest; or

(4) Escapes from custody or confinement. (Code 1981, § 38-2-1095, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1096. Assistance in a prisoner's escape.**

Any person subject to this article who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was



committed in strict compliance with law. (Code 1981, § 38-2-1096, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1097. Unlawful detention.**

Any person subject to this article who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct. (Code 1981, § 38-2-1097, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1098. Noncompliance with procedural rules; unnecessary delay.**

Any person subject to this article shall be punished as a court-martial may direct who:

- (1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this article; or
- (2) Knowingly and intentionally fails to enforce or comply with any provision of this article regulating the proceedings before, during, or after trial of an accused. (Code 1981, § 38-2-1098, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1099. Misbehavior before the enemy.**

Any person subject to this article shall be punished as a court-martial may direct who before or in the presence of the enemy:

- (1) Runs away;
- (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his or her duty to defend;
- (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
- (4) Casts away his or her arms or ammunition;
- (5) Is guilty of cowardly conduct;
- (6) Quits his or her place of duty to plunder or pillage;
- (7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia;
- (8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft,



or any other thing which it is his or her duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to another state, when engaged in battle. (Code 1981, § 38-2-1099, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1100. Compelling surrender.**

Any person subject to this article who compels or attempts to compel a commander, an individual in command of the National Guard of another state, or an individual in command of a vessel, aircraft, or other military property or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. (Code 1981, § 38-2-1100, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1101. Disclosure or improper use of countersign or parole.**

Any person subject to this article who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another, who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his or her knowledge, the person was authorized and required to give, shall be punished as a court-martial may direct. (Code 1981, § 38-2-1101, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1102. Forcing a safeguard.**

Any person subject to this article who forces a safeguard shall be punished as a court-martial may direct. (Code 1981, § 38-2-1102, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1103. Captured or abandoned property; trading and looting prohibited.**

(a) All persons subject to this article shall secure all public property taken for the service of the United States or this state or another state and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this article shall be punished as a court-martial may direct who:



- (1) Fails to carry out the duties prescribed in subsection (a);
- (2) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or abandoned property, whereby the person receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself; or
- (3) Engages in looting or pillaging. (Code 1981, § 38-2-1103, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1104. Aiding the enemy.**

Any person subject to this article shall be punished as a court-martial may direct who:

- (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or
- (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly. (Code 1981, § 38-2-1104, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1105. Misconduct as prisoner of war.**

Any person subject to this article shall be punished as a court-martial may direct who, while in the hands of the enemy in time of war:

- (1) For the purpose of securing favorable treatment by his or her captors acts without proper authority in a manner contrary to law, custom, or regulation to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or
- (2) While in a position of authority over such persons maltreats them without justifiable cause. (Code 1981, § 38-2-1105, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1106. Reserved.**

**38-2-1107. Signing false official document; making false official statement.**

Any person subject to this article who, with intent to deceive, signs any false record, return, regulation, order, or other official document made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct. (Code 1981, § 38-2-1107, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1108. Military property; loss, damage, destruction, or wrongful disposition.**

Any person subject to this article shall be punished as a court-martial may direct who, without proper authority:

(1) Takes, sells, or otherwise disposes of any military property of the United States or of another state;

(2) Willfully or through neglect damages, destroys, or loses any military property of the United States or of another state; or

(3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of another state. (Code 1981, § 38-2-1108, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1109. Property other than military property; waste, spoilage, or destruction.**

Any person subject to this article who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully takes, sells, destroys, or damages any property of another other than military property of the United States or of another state shall be punished as a court-martial may direct. (Code 1981, § 38-2-1109, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1110. Willful or negligent hazarding of vessel.**

(a) Any person subject to this article who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or any organized militia shall be punished as a court-martial may direct.

(b) Any person subject to this article who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or the organized militia shall be punished as a court-martial may direct. (Code 1981, § 38-2-1110, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1111. Driving while under the influence of drugs or alcohol.**

Any person subject to this article shall be punished as a court-martial may direct who:

(1) Drives, operates, or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance as described in subsection (b) of Code Section 38-2-1112.1; or



(2) Drives, operates, or is in actual physical control of any vehicle, aircraft or vessel while drunk or when the alcohol concentration in the person's blood is equal to or exceeds 0.08 grams of alcohol per 100 milliliters of blood, as shown by chemical analysis, within three hours after such operation or control, or the person's breath is equal to or exceeds 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis, within three hours after such operation or control. (Code 1981, § 38-2-1111, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1112. Under the influence of alcohol while on duty.**

Any person subject to this article, other than a sentinel or lookout, who is found under the influence of alcohol sufficient to impair the rational and full exercise of his or her mental or physical faculties on duty shall be punished as a court-martial may direct. (Code 1981, § 38-2-1112, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1112.1. Use, possession, manufacture, distribution, or importation of certain controlled substances; exceptions.**

(a) Any person subject to this article who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or of the organized militia a substance described in subsection (b) of this Code section shall be punished as a court-martial may direct.

(b) The substances provided for by subsection (a) of this Code section shall be:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance;

(2) Any substance not specified in paragraph (1) of this subsection that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States, 10 U.S.C. Section 801 et seq.; and

(3) Any other substance not specified in paragraph (1) of this subsection or contained on a list prescribed by the President under paragraph (2) of this subsection that is listed in schedules I through V of the Controlled Substances Act, 21 U.S.C. Section 812. (Code 1981, § 38-2-1112.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1113. Drunk or sleeping while standing post.**

Any sentinel or lookout who is found under the influence of alcohol sufficient to impair the rational and full exercise of his or her mental or physical faculties or sleeping upon his or her post or leaves it before being regularly relieved shall be punished, if the offense is committed in time of war, by confinement of not more than ten years or other punishment as a court-martial may direct, but if the offense is committed at any time other than in time of war, by such punishment as a court-martial may direct. (Code 1981, § 38-2-1113, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1114. Reserved.****38-2-1115. Malingering; feigning illness; self-infliction of injury.**

Any person subject to this article shall be punished as a court-martial may direct who for the purpose of avoiding work, duty, or service:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury. (Code 1981, § 38-2-1115, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1116. Riot or breach of peace.**

Any person subject to this article who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct. (Code 1981, § 38-2-1116, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1117. Provoking words or gestures.**

Any person subject to this article who uses provoking or reproachful words or gestures toward any other person subject to this article shall be punished as a court-martial may direct. (Code 1981, § 38-2-1117, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1118 through 38-2-1130. Reserved.****38-2-1131. Perjury.**

Any person subject to this article is guilty of perjury and shall be punished as a court-martial may direct who in a judicial proceeding or in a course of justice willfully and corruptly:



(1) Upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) In any declaration, certificate, verification, or statement under penalty of perjury, subscribes any false statement material to the issue or matter of inquiry. (Code 1981, § 38-2-1131, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1132. Fraudulent claims against the government.**

Any person subject to this article shall, upon conviction, be punished as a court-martial may direct:

(1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, this state, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, this state, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, this state, or any officer thereof:

(A) Makes or uses any writing or other paper or electronic submission knowing it to contain any false or fraudulent statements;

(B) Makes any oath, affirmation, or certification to any fact or to any writing or other paper or electronic submission knowing the oath, affirmation, or certification to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money or other property of the United States or this state, furnished or intended for the armed forces of the United States or the organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or this state, furnished or intended for the armed forces of the United States or the organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein



contained and with intent to defraud the United States or this state. (Code 1981, § 38-2-1132, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1133. Conduct unbecoming an officer.**

Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct unbecoming an officer shall be punished as a court-martial may direct. (Code 1981, § 38-2-1133, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1134. General provision.**

Though not specifically mentioned in this article, all disorders and neglects to the prejudice of good order and discipline in the organized militia and all conduct of a nature to bring discredit upon the organized militia shall be taken cognizance of by a court-martial and punished at the discretion of a military court. However, where a crime constitutes an offense that violates both this article and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court shall be determined in accordance with subsection (b) of Code Section 38-2-1002. (Code 1981, § 38-2-1134, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

## **PART 11**

### **MISCELLANEOUS PROVISIONS**

### **38-2-1135. Courts of inquiry; composition; parties; report.**

(a) Courts of inquiry to investigate any matter of concern to the organized militia may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(c) Any person subject to this article whose conduct is subject to inquiry shall be designated as a party. Any person subject to this article who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.



(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. (Code 1981, § 38-2-1135, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1136. Authority to administer oaths; limitations; effect of signature.**

(a) The following persons shall have the power to administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates;
- (2) All summary courts-martial;
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (4) All commanding officers of the naval militia; and
- (5) All other persons designated by regulations of the armed forces of the United States or by law.

(b) The following persons shall have the power to administer oaths necessary in the performance of their duties:

- (1) The president, military judge, and trial counsel for all general and special courts-martial;
- (2) The president and the counsel for the court of any court of inquiry;
- (3) All officers designated to take a deposition;
- (4) All persons detailed to conduct an investigation;
- (5) All recruiting officers; and
- (6) All other persons designated by regulations of the armed forces of the United States or by law.



(c) The signature without seal of any such person provided for by subsections (a) and (b) of this Code section, together with the title of his or her office, is prima facie evidence of the person's authority. (Code 1981, § 38-2-1136, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1136.1. Marshals; duties, powers, immunities.**

(a) Military judges may appoint and, at any time, remove one or more marshals who shall execute any process, mandate, or order issued by the judge and shall perform all acts and duties by this chapter imposed on or authorized to be performed by any sheriff as defined in Code Section 15-16-10.

(b) All such marshals shall be deemed peace officers and for the purposes of this article shall have all the powers and immunities of peace officers. (Code 1981, § 38-2-1136.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

### **38-2-1137. Explanation of Code sections to enlisted personnel.**

(a)(1) The Code sections specified in paragraph (3) of this subsection shall be carefully explained to each enlisted member at the time of, or within 90 days after, the member's initial entrance into a duty status with the organized militia.

(2) Such articles as provided for by paragraph (1) of this subsection shall be explained again:

(A) After the member has completed basic or recruit training; and

(B) At the time when the member reenlists.

(3) This subsection shall apply with respect to this Code section and Code Sections 38-2-1002 through 38-2-1005, 38-2-1007 through 38-2-1014, 38-2-1015, 38-2-1025, 38-2-1027, 38-2-1031, 38-2-1037, 38-2-1038, 38-2-1055, 38-2-1077 through 38-2-1134, 38-2-1138, and 38-2-1139.

(b) The text of this article and of the regulations prescribed hereunder shall be made available to a member of the organized militia, upon request by the member, for the member's personal examination.

(c) Failure to provide the explanations of this article as provided for by this Code section shall not be a defense to a court-martial proceeding, the administration of nonjudicial punishment, or any other action. (Code 1981, § 38-2-1137, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)



**38-2-1138. Complaints of wrongs by commanding officers.**

Any member of the organized militia who believes himself or herself wronged by a commanding officer and who, upon due application to that commanding officer, is refused redress may complain to the assistant adjutant general for army, the assistant adjutant general for air, or the brigadier general in charge of the State Defense Force, as applicable, who shall forward the complaint to the senior force commander over the officer against whom such complaint is made. The senior force commander shall examine into the complaint and take proper measures for redressing the wrong complained of and shall, as soon as possible, send to the adjutant general a true statement of such complaint with the proceedings had thereon. Any complaint against a senior force commander shall be made to the adjutant general who shall examine into the complaint and take proper measures for redressing the wrong complained of. (Code 1981, § 38-2-1138, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1138.1. State administrative letter of reprimand.**

(a) The adjutant general, assistant adjutant general for army, or assistant adjutant general for air may issue to any member under his or her authority a state administrative letter of reprimand.

(b) A state administrative letter of reprimand shall not be filed in the member's federal personnel records unless it meets the requirements for filing under the applicable regulations or instructions of the affected member.

(c) A state administrative letter of reprimand shall be included for consideration when determining future assignments within the state for the affected member.

(d) The member against whom a state administrative letter of reprimand is issued shall have the same rights to review evidence and present a rebuttal as he or she would have if the state administrative letter of reprimand were to be filed in his or her federal personnel file. (Code 1981, § 38-2-1138.1, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1139. Redress of injuries to private property; complaint; investigating board; assessment.**

(a) Whenever a complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the organized militia, such commanding officer may, under such regulations prescribed pursuant to Part 1 of Article 2 of this chapter, convene



a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board shall be subject to the approval of the commanding officer and, in the amount approved by such commanding officer, shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board. (Code 1981, § 38-2-1139, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1140. Delegation of authority by Governor.**

Except as provided in Code Section 38-2-1022, the Governor may delegate any authority vested in the Governor under this article and provide for the subdelegation of any such authority. (Code 1981, § 38-2-1140, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1141. Fees and authorized travel expenses of witnesses, victims, court reporters, and interpreters.**

The fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention, and confinement, and all other necessary expenses of prosecution and the administration of military justice, not otherwise payable by any other source, shall be paid out of the military fund as described in Code Section 38-2-170. (Code 1981, § 38-2-1141, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

#### **38-2-1142. Fines for contempt; methods of collection and payment.**

(a) Fines collected as a result of being found in contempt shall be collected in the following manner:

(1) By cash or money order;

(2) By retention of any pay or allowances due or to become due to the person fined from another state or the United States; or



(3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a person delinquent in paying a fine, as provided by law.

(b) Any sum so received or retained shall be deposited in the military justice fund as provided in Code Section 38-2-170. (Code 1981, § 38-2-1142, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1143. Construction with the federal Uniform Code of Military Justice.**

This article shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, Chapter 47 of Title 10 of the United States Code. (Code 1981, § 38-2-1143, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1144. Immunity.**

All persons acting under the provisions of this article, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of the acts or omissions which they did or failed to do as part of their duties under this article. (Code 1981, § 38-2-1144, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**38-2-1145. Severability.**

The provisions of this article are hereby declared to be severable, and if any provision of this article or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this article. (Code 1981, § 38-2-1145, enacted by Ga. L. 2015, p. 753, § 1/HB 98.)

**CHAPTER 3**

**EMERGENCY MANAGEMENT**

Article 2		Article 3	
Organization and Administration		Emergency Powers	
Sec.		PART 1	
38-3-37.	Prohibited actions by government official or employee during declared state of emergency.	GOVERNOR	
		Sec.	
		38-3-51.	Emergency powers of Gover-



Sec.		based unified incident com-
	nor; termination of emergency;	mand system; utilization;
	limitations in energy emer-	training; implementation;
	gency; immunity.	funding; first informer broad-
38-3-57.	Establishment of standard-	casters.
	ized, verifiable, performance	

ARTICLE 2

ORGANIZATION AND ADMINISTRATION

**38-3-37. Prohibited actions by government official or employee during declared state of emergency.**

- (a) As used in this Code section, the term:
- (1) “Firearm” means any handgun, rifle, shotgun, or similar device or weapon which will or can be converted to expel a projectile by the action of an explosive or electrical charge.
  - (2) “License holder” shall have the same meaning as set forth in Code Section 16-11-125.1.
  - (3) “Weapon” shall have the same meaning as set forth in Code Section 16-11-125.1.
- (b) No official or employee of the state or any political subdivision thereof, member of the National Guard in the service of the state, or any person operating pursuant to or under color of state law, while acting during or pursuant to a declared state of emergency, shall:
- (1) Temporarily or permanently seize, or authorize the seizure of, any firearm or ammunition or any component thereof the possession of which was not prohibited by law at the time immediately prior to the declaration of a state of emergency, other than as provided by the criminal or forfeiture laws of this state;
  - (2) Prohibit possession of any firearm or ammunition or any component thereof or promulgate any rule, regulation, or order prohibiting possession of any firearm or ammunition or any component thereof if such possession was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency;
  - (3) Prohibit any license holder from carrying any weapon or promulgate any rule, regulation, or order prohibiting such carrying if such carrying was not otherwise prohibited by law at the time immediately prior to the declaration of a state of emergency; or
  - (4) Require the registration of any firearm. (Code 1981, § 38-3-37, enacted by Ga. L. 2014, p. 599, § 2-2/HB 60.)



**Effective date.** — This Code section became effective July 1, 2014.

**Cross references.** — Right to Keep and Bear Arms, US Const., amend. 2.

**Editor's notes.** — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Ga. L. 2014, p. 599, § 2-1/HB 60, not codified by the General Assembly, provides: "This part shall be known to be in honor of Representative Bobby Franklin."

**Law reviews.** — For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014).

## ARTICLE 3

### EMERGENCY POWERS

#### PART 1

#### GOVERNOR

### **38-3-51. Emergency powers of Governor; termination of emergency; limitations in emergency; immunity.**

(a) In the event of actual or impending emergency or disaster of natural or human origin, or pandemic influenza emergency, or impending or actual enemy attack, or a public health emergency, within or affecting this state or against the United States, the Governor may declare that a state of emergency or disaster exists. As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the Governor shall issue a call for a special session of the General Assembly pursuant to Article V, Section II, Paragraph VII of the Constitution of Georgia, which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor. The General Assembly by concurrent resolution may terminate a state of emergency or disaster at any time. Thereupon, the Governor shall by appropriate action end the state of emergency or disaster.

(b) A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to Articles 1



through 3 of this chapter or any other law relating to emergencies or disasters.

(c) The Governor shall have and may exercise for such period as the state of emergency or disaster exists or continues the following additional emergency powers:

(1) To enforce all laws, rules, and regulations relating to emergency management and to assume direct operational control of all civil forces and helpers in the state;

(2) To seize, take for temporary use, or condemn property for the protection of the public in accordance with condemnation proceedings as provided by law;

(3) To sell, lend, give, or distribute all or any such property among the inhabitants of the state and to account to the proper agency for any funds received for the property; and

(4) To perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.

(d) In addition to any other emergency powers conferred upon the Governor by law, he may:

(1) Suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(2) Utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the emergency or disaster;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster;

(4.1) Compel a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary for emergency response. The use of such health care facility may include transferring the management and supervision of the health care facility to the Department of Public Health for a limited or unlimited period of time not extending beyond the termination of the public health emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems



this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, or combustibles; provided, however, that for purposes of this paragraph, the terms “explosives” and “combustibles” shall not include firearms or ammunition or any component thereof; and

(9) Make provision for the availability and use of temporary emergency housing.

(e) When the available funds are not sufficient for the purpose of paying the expenses incident to carrying out the provisions authorized by Articles 1 through 3 of this chapter, the Governor may transfer from any available fund in the state treasury such sum as may be necessary to meet the emergency or disaster; and the moneys so transferred shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

(f) In the event that the Governor proclaims an emergency or disaster, as defined by Articles 1 through 3 of this chapter, to be a catastrophe within the meaning of Article III, Section IX, Paragraph VI(b) of the Constitution of the state, the funds referred to in the paragraph may be utilized by the Governor for the purpose of carrying out the provisions authorized by Articles 1 through 3 of this chapter.

(g) In the event that the Governor proclaims an emergency or disaster, as defined in Articles 1 through 3 of this chapter, the Governor may provide welfare benefits to the citizens of this state in the form of grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by an emergency or disaster in those cases where the individuals or families are unable to meet the expenses or needs from other means, provided that such grants are authorized only when matching federal funds are available for such purposes pursuant to the Disaster Relief Act of 1974 (Pub. L. 93-288).

(h) If the Governor declares a state of emergency solely because of an energy emergency, he shall not have the authority to:

(1) Seize, take for temporary use, or condemn property other than energy resources as authorized by paragraph (2) of subsection (c) of this Code section;



(2) Sell, lend, give, or distribute property other than energy resources as authorized by paragraph (3) of subsection (c) of this Code section; or

(3) Commandeer or utilize property other than energy resources as authorized by paragraph (4) of subsection (d) of this Code section.

(i)(1) The Governor may direct the Department of Public Health to coordinate all matters pertaining to the response of the state to a public health emergency including without limitation:

(A) Planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state;

(B) Coordinating public health emergency responses between state and local authorities;

(C) Collaborating with appropriate federal government authorities, elected officials of other states, private organizations, or private sector companies;

(D) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;

(E) Organizing public information activities regarding state public health emergency response operations; and

(F) Providing for special identification for public health personnel involved in a public health emergency.

(2) The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency:

(A) Consonant with maintenance of appropriate quarantine rules, the department shall permit access to counsel in person or by such other means as practicable that do not threaten the integrity of the quarantine;

(B) An order imposing a quarantine or a vaccination program may be appealed but shall not be stayed during the pendency of the challenge. The burden of proof shall be on the state to demonstrate that there exists a substantial risk of exposing other persons to imminent danger. With respect to vaccination, the state's burden of proof shall be met by clear and convincing evidence. With respect to quarantine, the state's burden of proof shall be met by a preponderance of the evidence;

(C) An individual or a class may challenge the order before any available judge of the superior courts in the county where the individual or a member of the class resides or in Fulton County.



Such judge, upon attestation of the exigency of the circumstances, may proceed ex parte with respect to the state or may appoint counsel to represent the interests of the state or other unrepresented parties. The judge hearing the matter may consolidate a multiplicity of cases or, on the motion of a party or of the court, proceed to determine the interests of a class or classes. The rules of evidence applicable to civil cases shall be applied to the fullest extent practicable taking into account the circumstances of the emergency. All parties shall have the right to subpoena and cross-examine witnesses, but in enforcement of its subpoena powers the court shall take into account the circumstances of the emergency. All proceedings shall be transcribed to the extent practicable. Filing fees shall be waived and all costs borne by the state;

(D) The judge hearing the matter may enter an appropriate order upholding or suspending the quarantine or vaccination order. With respect to vaccination, the order may be applicable on notice to the department or its agents administering the vaccination, or otherwise in the court's discretion. With respect to quarantines, the order shall be automatically stayed for 48 hours;

(E) The department or any party may immediately appeal any order to the Supreme Court pursuant to paragraph (7) of subsection (a) of Code Section 5-6-34. The Supreme Court, or any available Justice thereof in the event that circumstances render a full court unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. In the event no Justice is available, then a panel of the Court of Appeals, or any Judge thereof in the event that circumstances render a panel unavailable, shall consider the appeal on an expedited basis and may suspend any time requirements for the parties to file briefs. If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial court shall either direct the filing of an appeal in its order or itself certify the order for appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and such appeals shall be heard expeditiously; and

(F) No provisions of this paragraph shall be construed to limit or restrict the right of habeas corpus under the laws of the United States.

(j) Any individual, partnership, association, or corporation who acts in accordance with an order, rule, or regulation entered by the Governor pursuant to the authority granted by this Code section will not be held liable to any other individual, partnership, association, or corporation by reason thereof in any action seeking legal or equitable relief. (Ga. L.



1951, p. 224, § 7; Ga. L. 1973, p. 74, § 4; Ga. L. 1974, p. 558, § 1; Ga. L. 1975, p. 1551, § 1; Ga. L. 1977, p. 192, §§ 2, 3; Ga. L. 1981, p. 389, § 2; Ga. L. 1983, p. 3, § 59; Ga. L. 2002, p. 1386, §§ 12-15; Ga. L. 2009, p. 184, § 4/HB 217; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 701, § 1/HB 339; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2014, p. 599, § 2-3/HB 60.)

**The 2014 amendment**, effective July 1, 2014, substituted the present provisions of paragraph (d)(8) for the former provisions, which read: “Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles; provided, however, that any limitation on firearms under this Code section shall not include an individual firearm owned by a private citizen which was legal and owned by that citizen prior to the declaration of state of emergency or disaster or thereafter acquired in compliance with all applicable laws of this state and the United States; and”.

**Editor’s notes.** — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Safe Carry Protection Act.’”

Ga. L. 2014, p. 599, § 2-1/HB 60, not codified by the General Assembly, provides: “This part shall be known to be in honor of Representative Bobby Franklin.”

**Law reviews.** — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 47 (2014).

**38-3-57. Establishment of standardized, verifiable, performance based unified incident command system; utilization; training; implementation; funding; first informer broadcasters.**

(a) The Georgia Emergency Management Agency shall establish and maintain, in collaboration with all appropriate state agencies and volunteer organizations with emergency support function roles and professional organizations that represent local public safety agencies, including the Emergency Management Association of Georgia, the Georgia Association of Police Chiefs, the Georgia Fire Chiefs’ Association, and the Georgia Sheriffs’ Association, a standardized, verifiable, performance based unified incident command system.

(b) Such system shall be consistent with the Georgia Emergency Operations Plan and shall be utilized in response to emergencies and disasters referenced in the Georgia Emergency Operations Plan, including presidentially declared disasters and states of emergency issued by the Governor.

(c) The Georgia Emergency Management Agency, in cooperation with the Georgia Public Safety Training Center and the State Forestry Commission, shall develop or adopt a course of instruction for use in training and certifying emergency response personnel in unified incident command.

(d) All local public safety and emergency response organizations, including emergency management agencies, law enforcement agencies,



fire departments, and emergency medical services, shall implement the standardized unified incident command system provided for in subsection (a) of this Code section by October 1, 2004.

(e) Local agencies that have not established such system by October 1, 2004, shall not be eligible for state reimbursement for any response or recovery related expenses.

(f)(1) As used in this subsection, the term:

(A) "Broadcaster" means any corporation or other entity that is primarily engaged in the business of broadcasting video or audio programming, whether through the public airwaves, cable, direct or indirect satellite transmission, or any other similar means of communication.

(B) "Emergency" means the declaration of a state of emergency or disaster as provided in Code Section 38-3-51 or as presidentially declared.

(C) "First informer broadcaster" means a broadcaster in Georgia who makes application to the Georgia Emergency Management Agency for designation as a first informer broadcaster and who is granted such designation as a first informer broadcaster pursuant to rules and regulations promulgated by the director of emergency management.

(2) The unified incident command system and the Georgia Emergency Operations Plan shall, by July 1, 2016, establish planning for first informer broadcasters such that first informer broadcasters, to any extent practicable, may during an emergency:

(A) Have access to areas affected by an emergency for the purpose of restoring, repairing, or resupplying any facility or equipment critical to the ability of a broadcaster to acquire, produce, or transmit emergency related programming, including but not limited to repairing and maintaining transmitters and generators and transporting fuel for generators;

(B) Have access to the distribution of fuel, food, water, supplies, equipment, and any other materials necessary for maintaining or producing a broadcast or broadcasting signal; and

(C) Not have vehicles, fuel, food, water, and any other materials seized or condemned that are essential for maintaining or producing a broadcast or broadcasting signal.

(3) The Georgia Emergency Management Agency may develop or adopt courses of instruction for use in training personnel of first informer broadcasters on personal safety and navigation in an area affected by an emergency. The requirements of any such training



shall be established pursuant to rules and regulations promulgated by the director of emergency management. The costs of any such training shall be paid by the first informer broadcasters participating in the training. (Code 1981, § 38-3-57, enacted by Ga. L. 2004, p. 743, § 3; Ga. L. 2012, p. 775, § 38/HB 942; Ga. L. 2014, p. 680, § 2/SB 381.)

**The 2014 amendment**, effective July 1, 2014, added subsection (f).

**Editor’s notes.** — Ga. L. 2014, p. 680, § 1/SB 381, not codified by the General

Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia First Informer Broadcasters Act.’”

ARTICLE 10

STATE-WIDE FIRST RESPONDER BUILDING MAPPING INFORMATION SYSTEM

**38-3-152. Creation and operation of building mapping information system; availability to government agencies; rules and regulations; federal funding sources; exemption of information from public disclosure; recommendations for training guidelines; limitations.**

**Law reviews.** — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 139 (2012).

CHAPTER 4

VETERANS AFFAIRS

Article 2		Sec.	
Veterans Benefits			rules and regulations concerning.
PART 2			PART 4
WAR VETERANS HOME			RETURNING VETERANS TASK FORCE
Sec.	38-4-55.	Admissions and discharges;	38-4-90. Creation.
			38-4-91. Membership.
			38-4-92. Duties; recommendations.

**Cross references.** — Creation of veterans court division, § 15-1-17.



ARTICLE 2  
VETERANS BENEFITS

PART 2

WAR VETERANS HOME

**38-4-55. Admissions and discharges; rules and regulations concerning.**

(a) Admissions to and discharges from any facility of the Georgia State War Veterans' Home shall be under the control of the governing authority of the facility concerned under the laws and department rules and regulations in force at the time application for admission or for discharge is presented; provided, however, that a war veteran shall not be eligible for admission to the Georgia War Veterans' Nursing Home or the Georgia State War Veterans' Home unless such war veteran:

(1) Has been a resident of this state for a period of at least two years immediately prior to application for admission; or

(2) Is a current resident of this state and has been a resident of this state for at least five years out of the last 15 years prior to application for admission.

Provided, further, that the Veterans Service Board may admit and discharge veterans to the Georgia State War Veterans' Home who qualify for care and treatment under Title 38, U.S.C., Section 101 (19) and Section 641. The Veterans Service Board may adopt appropriate rules consistent with accepted medical considerations to determine if a war veteran qualifies under this subsection.

(b) The governing authority of such facility shall exercise appropriate police power and power of restraint over veterans at the Georgia State War Veterans' Home consistent with policies applied to other patients under their care or responsibility. (Ga. L. 1955, Ex. Sess., p. 18, § 4; Ga. L. 1969, p. 633, § 1; Ga. L. 1999, p. 796, § 1; Ga. L. 2015, p. 587, § 1/HB 180.)

**The 2015 amendment**, effective July 1, 2015, added the subsection (a) and (b) designations; and, in subsection (a), added the colon at the end of the first paragraph; added the paragraph (a)(1) designation, in paragraph (a)(1), substituted "Has" for "has" at the beginning, substituted "two years" for "five years", and added "; or" at the end, added paragraph (a)(2), and, in

the ending undesignated paragraph of subsection (a), substituted "Provided," for "provided" at the beginning, substituted ". The Veterans Service Board" for "and" at the beginning of the second sentence, and substituted "determine if a war veteran qualifies under this subsection" for "carry out this function" at the end.



## PART 4

## RETURNING VETERANS TASK FORCE

**Effective date.** — This part became effective July 1, 2013.

**38-4-90. Creation.**

There is created within the Department of Veterans Service the Returning Veterans Task Force. (Code 1981, § 38-4-90, enacted by Ga. L. 2013, p. 563, § 1/SB 76.)

**Cross references.** — Creation of veterans court division, § 15-1-17.

**38-4-91. Membership.**

The Returning Veterans Task Force shall consist of one representative each from the Department of Veterans Service appointed by the commissioner of veterans service, the Department of Community Health appointed by the commissioner of community health, the Department of Behavioral Health and Developmental Disabilities appointed by the commissioner of behavioral health and developmental disabilities, the Department of Labor appointed by the Commissioner of Labor, the Department of Defense appointed by the adjutant general, the Board of Regents of the University System of Georgia appointed by the chancellor of the Board of Regents of the University System of Georgia, and the Technical College System of Georgia appointed by the commissioner of the Technical College System of Georgia. Other agencies may be invited to participate in the task force based on needs identified over time. The member appointed by the commissioner of veterans service shall serve as chairperson of the task force. (Code 1981, § 38-4-91, enacted by Ga. L. 2013, p. 563, § 1/SB 76.)

**38-4-92. Duties; recommendations.**

The task force shall meet at least quarterly and shall investigate how state services can be provided to veterans returning from military service from which the veteran was discharged under conditions other than dishonorable within the most recent three years in order to assist them in integrating into society. The task force shall issue recommendations to each relevant state agency regarding improving the delivery of services to returning veterans. On or before November 1 of each year, the task force shall transmit specific suggestions for legislation designed to assist returning veterans to the Speaker of the House of Representatives, the Lieutenant Governor, and the Governor. (Code 1981, § 38-4-92, enacted by Ga. L. 2013, p. 563, § 1/SB 76.)



# TITLE 39

## MINORS

Chap.

2. Regulation of Employment of Minors, 39-2-1 through 39-2-21.

3. Interstate Compact on Juveniles, 39-3-1 through 39-3-7.  
[Repealed]

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### CHAPTER 1

#### GENERAL PROVISIONS

**39-1-1. Age of legal majority; residence of persons in state for purpose of attending school.**

**Cross references.** — Termination of services upon reaching age of majority, juvenile's order of disposition, § 15-11-451.  
§ 15-11-443. Referral of juveniles to adult

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### CHAPTER 2

#### REGULATION OF EMPLOYMENT OF MINORS

Sec.		Sec.	
39-2-10.	Employment of minors 12 and 13 years of age in wholesale and retail stores [Repealed].		of lawns, gardens, and shrubbery.
39-2-11.	Employment certificates — Required; requirements for issuance.	39-2-12.	Employment certificates — Contents; availability of blank forms; filing of duplicate copies.
39-2-11.1.	Employment of minors 14 years of age or older during school vacation months for care	39-2-14.	Employment certificates — Revocation of certificates by Commissioner of Labor.

**39-2-10. Employment of minors 12 and 13 years of age in wholesale and retail stores.**

Reserved. Repealed by Ga. L. 1981, p. 792, § 1, effective April 7, 1981.

**Editor's notes.** — Ga. L. 2015, p. 5, correct the Code, reserved the designation of this Code section.  
§ 39/HB 90, effective March 13, 2015, part of an Act to revise, modernize, and



**39-2-11. Employment certificates — Required; requirements for issuance.**

(a) Minors who are at least 12 years of age but less than 16 years of age shall not be employed by or permitted to work for any person, firm, or corporation unless an employment certificate, showing the true age of such minor and that such minor is not less than 12 years of age and is physically fit to engage in the employment sought to be obtained, is issued in writing by an appropriate issuing officer who shall be one of the following:

(1) If enrolled in a public school, the school superintendent or some member of his or her staff authorized by him or her, in the county or city where the minor resides;

(2) If enrolled in a licensed private school, the principal administrative officer thereof or some member of his or her staff authorized by him or her; or

(3) If enrolled in a home study program, the person, parent, or guardian providing the home study program.

(b) No employment certificate shall be issued to any minor until the minor shall have submitted to the issuing officer:

(1) A certified copy of a birth certificate or birth registration card; and

(2) A statement from the prospective employer describing the type of employment offered; and indicating that if furnished with a certificate from the appropriate issuing officer as required in subsection (a) of this Code section, such prospective employer could employ the minor immediately. It shall be understood that the prospective employer, by furnishing such statement, does not undertake to employ the minor for any specific period of time.

(c)(1) The employment certificate provided for in subsection (a) of this Code section shall be accompanied by a letter from the appropriate issuing officer indicating that the minor is enrolled in a school or a home study program full-time and has an attendance record in good standing for the current academic year. The employer of a minor shall maintain a copy of such certificate and letter in the minor's employment file. Such letter shall be updated in January of each subsequent academic year during which the minor maintains his or her employment until such minor reaches the age of 16 years. Any employer failing to comply with this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed \$1,000.00, up to 12 months' imprisonment, or both, for each violation.



(2) The State Board of Education shall promulgate rules and regulations to provide for the issuance of a waiver or exemption from the provisions of this subsection to a minor, upon such minor's petition, if there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2004, p. 107, § 21A; Ga. L. 2010, p. 878, § 39/HB 1387; Ga. L. 2015, p. 943, § 1/HB 366.)

**The 2015 amendment**, effective July 1, 2015, rewrote this Code section.

### **39-2-11.1. Employment of minors 14 years of age or older during school vacation months for care of lawns, gardens, and shrubbery.**

Notwithstanding any other provision of this chapter or any rule or regulation of the Commissioner of Labor adopted pursuant to the provisions of Code Section 39-2-2 to the contrary, a minor 14 years of age or over may be employed during the months of vacation from school in the care and maintenance of lawns, gardens, and shrubbery owned or leased by the employer of such minor, including the operation of equipment in connection therewith, provided that the minor is covered by an accident and sickness insurance plan or a workers' compensation insurance policy or plan provided by the employer; that the minor presents the employer with the employment certificate required by Code Section 39-2-11; and that the minor is permitted by the employer to care for and maintain only those lawns, gardens, and shrubbery owned or leased by the employer. The work authorized by this Code section includes the care and maintenance of lawns, gardens, and shrubbery on the grounds of mills or factories described in Code Section 39-2-1 and on the grounds of any other factory, mill, or business where employment of the minor within the factory, mill, or business might be prohibited by this chapter or by rules and regulations of the Commissioner of Labor. (Code 1981, § 39-2-11.1, enacted by Ga. L. 1988, p. 583, § 1; Ga. L. 1990, p. 1501, § 2; Ga. L. 2015, p. 943, § 2/HB 366.)

**The 2015 amendment**, effective July 1, 2015, in the proviso, inserted "that" following "provided" near the beginning, substituted "employer; that the minor" for

"employer that, the minor" near the middle, inserted "employment" preceding "certificate", and substituted "39-2-11; and that" for "39-2-11, and the" in the middle.



**39-2-12. Employment certificates — Contents; availability of blank forms; filing of duplicate copies.**

(a) Employment certificates shall state the full name, date, and place of birth of the minor; the name and address of the parents, guardian, or other person having custody of such minor; and that the minor has appeared before the issuing officer and presented the evidence of age required by Code Section 39-2-11.

(b) Blank forms of employment certificates shall be made available by the Commissioner of Labor to school superintendents of public schools in the respective cities and counties, to principal administrative officers of private schools, and to persons, parents, or guardians providing home study programs.

(c) A duplicate copy of each employment certificate shall be filed with the Commissioner of Labor within 30 days from its issuance. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2015, p. 943, § 3/HB 366.)

**The 2015 amendment**, effective July 1, 2015, substituted the present provisions of subsection (b) for the former provisions, which read: "Blank forms of employment certificates and identification

cards shall be furnished by the Commissioner of Labor to the school superintendents in the respective cities and counties."

**39-2-14. Employment certificates — Revocation of certificates by Commissioner of Labor.**

The Commissioner of Labor may at any time revoke any employment certificate if in his or her judgment the employment certificate was improperly issued. The Commissioner shall be authorized to investigate the true age of any minor employed, hear evidence, and require the production of relevant books or documents. If the employment certificate of a minor is revoked, the employer of the minor at the time of the revocation shall be notified and the minor shall not be employed or permitted to work thereafter until a new and valid employment certificate shall have been obtained. (Ga. L. 1925, p. 291, § 4; Code 1933, § 54-304; Ga. L. 1946, p. 67, § 7; Ga. L. 1981, p. 792, § 3; Ga. L. 2015, p. 943, § 4/HB 366.)

**The 2015 amendment**, effective July 1, 2015, inserted "or her" in the first sentence of this Code section.



**CHAPTER 3****INTERSTATE COMPACT ON JUVENILES**

Sec.

39-3-1 through 39-3-7 [Repealed].

**39-3-1 through 39-3-7.**

Reserved. Repealed by Ga. L. 2014, p. 763, § 1-1/HB 898, effective July 1, 2014.

**Editor's notes.** — This chapter consisted of Code Sections 39-3-1 through 39-3-7, relating to interstate compact on juveniles, and was based on Ga. L. 1972, p. 784, §§ 1-7; Ga. L. 1976, p. 1070, § 1.

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**CHAPTER 4****INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN****39-4-1. “Appropriate public authority” defined.****JUDICIAL DECISIONS**

**Cited in** In the Interest of S.R.C.J., 317 Ga. App. 699, 732 S.E.2d 547 (2012).

**39-4-10. Satisfaction of requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies.****JUDICIAL DECISIONS**

**Cited in** In the Interest of S.R.C.J., 317 Ga. App. 699, 732 S.E.2d 547 (2012).







